United States Court of Appeals

for the Second Circuit

APPENDIX

United States Court of Appeals

For the Second Circuit

No. 74-2044

LOCAL 1104, COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO AND LOCAL 1101, COMMUNICATION WORKERS OF AMERICA, AFL-CIO,

Petitioners,

—against—

NATIONAL LABOR RELATIONS BOARD,

Respondent.

ON PETITION FOR REVIEW AND CROSS-APPLICATION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

JOINT APPENDIX

COHN, GLICKSTEIN, LURIE, OSTRIN & LUBELL, ESQS.
1370 Avenue of the Americas,
New York, New York 10019
(212) 757-4000

KANE AND KOONS, ESQS.
1100 Seventeenth Street, N.W.
Washington, D.C. 20036
Attorneys for Petitioners

ELLIOTT MOORE, ESQ.
Deputy Associate General Counsel
National Labor Relations Board
1717 Pennsylvania Avenue, N.W.
Washington, D.C. 20570
Attorney for Respondent

PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

Chronological List of Relevant Docket Entries

In the Matter of:

LOCAL 1104, COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO and LOCAL 1101, COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO

Case Nos.: 29-CB-1347-3 & 29-CB-1426

10-17-72	Charge filed in Case No. 29-CB-1347-3
1-31-73	Complaint and Notice of Hearing in Case No. 29-CB-1347-3, dated
2- 2-73	Charge filed in No. 29-CB-1426
2-14-73	Petitioner's Answer, dated
2-28-73	Order Rescheduling Hearing, dated
3-27-73	Order Rescheduling Hearing, dated
3-27-73	Complaint and Notice of Hearing in Case No. 29-CB-1426, dated
4- 9-73	Petitioner's Notice to Amend Answer, dated
4- 9-73	Petitioner's Answer in Case No. 29-CB-1426, dated
5- 1-73	Order Rescheduling Hearing in Case No. 29-CB-1347-3, dated
5- 1-73	Order Rescheduling Hearing in Case No. 29-CB-1426, dated
5- 2-73	Charging Party's Request for Adjournment, dated
6- 6-73	Order of Consolidation, dated
6- -7-73	Order Rescheduling Hearing, dated
6-18-73	Charging Party's Request for Adjournment, dated

Chronological List of Relevant Docket Entries

7-25-73	Order Rescheduling Hearing, dated
9-13-73	Order Rescheduling Hearing, dated
10-12-73	Amended Complaint and Notice of Hearing in Case No. 29-CB-1426, dated
10-19-73	Petitioner's Answer to Amended Complaint, dated
10-24-73	Hearing opened
10-25-73	Hearing closed
12-28-73	Administrative Law Judge's Decision issued
2- 6-74	Petitioners' Exceptions to Administrative Law Judge's Decision, received
2-12-74	General Counsel's Exceptions to the Administrative Law Judge's Decision, received
6- 6-74	Board's Decision and Order dated June 6, 1974

Charge in Rigby Case
(General Counsel's Exhibit 1a)

(Mounted Opposite)

Complaint in Rigby Case
(General Counsel's Exhibit 1c)

UNITED STATES OF AMERICA
BEFORE THE NATONAL LABOR RELATIONS BOARD
REGION 29

Case No. 29-CB-1347-3

LOCAL 1104, COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO
(NEW YORK TELEPHONE COMPANY)

and

WELLINGTON G. RIGBY, AN INDIVIDUAL

It having been charged by Welling G. Rigby, an individual, herein called Rigby, that Local 1104, Communications Workers of America, AFL-CIO, herein called Respondent, has engaged in, and is engaging in, certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as Amended, 29 U.S.C., Sec. 151, *et seq.*, herein called the Act, the General Counsel of the National Labor Relations Board, herein called the Board, by the undersigned Regional Director for Region 29, pursuant to Section 10(b) of the Act and the Board's Rules and Regulations—Series 8, as amended, Section 102.15, hereby issues this Complaint and Notice of Hearing and alleges as follows:

1. The Charge in this proceeding was filed by Rigby on October 17, 1972, and served by registered mail upon Respondent on or about October 18, 1972.

2. (a) New York Telephone Company, herein called Telco, is, and has been at all times material herein, a corpo-

ration duly organized under, and existing by virtue of, the laws of the State of New York.

(b) At all times material herein, Telco has maintained its principal office and place of business at 140 West Street, in the City and State of New York, and various other places of business in the State of New York including a garage at Bellmore, County of Nassau, State of New York, where it is, and has been at all times material herein, continuously engaged in providing telephone communication and related services.

(c) During the past year, which period is representative of its annual operations generally, Telco in the course and conduct of its operations, derived gross revenues therefrom in excess of $500,000.

(d) During the past year, Telco, in the course and conduct of its business, purchased, and caused to be transported and delivered to its place of business in New York State, telephone cable, wire, and other goods and materials valued in excess of $50,000, of which goods and materials valued in excess of $50,000, were transported and delivered to its places of business in interstate commerce, directly from states of the United States other than the State of New York.

(e) Telco is, and has been at all times material herein, an employer engaged in commerce, and in an industry affecting commerce, within the meaning of Section 2(2), (6) and (7) of the Act.

3. Respondent is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

Complaint in Rigby Case

4. At all times material herein, Respondent has been the exclusive recognized bargaining agent of a unit of certain employees of Telco employed within the State of New York, including those in Bellmore, exclusive of all guards, watchmen, professional employees, supervisors as defined in the Act, and employees regularly performing confidential labor relations duties.

5. At all times material herein, and effective since on or about July 18, 1972, Respondent and Telco have performed, maintained, and given effect to an existing collective bargaining agreement, relating to the hire, tenure and other terms and conditions of employment of the employees of Telco in the unit described above in paragraph 4.

6. At all times material herein, the collective bargaining agreement described above in paragraph 5 has included an "Agency Shop" provision whereby "Each regular employee shall, as a condition of employment, pay or tender to the Union amounts equal to the periodic dues applicable to members for the period beginning 30 days after hire or 30 days after February 17, 1972, whichever occurs later, until the termination of" the collective bargaining agreement.

7. At all times material herein, since on or about July 6, 1948, and thereafter, Rigby has been employed by Telco within the bargaining unit described above in paragraph 4.

8. On or about July 20, 1972, Rigby applied for membership in Respondent.

9. On or about August 22, 1972, Respondent notified Rigby that he was required to submit to Respondent retroactive dues payments by "Bank Money Order" in order to avoid violation of the "Agency Shop" provision.

Complaint in Rigby Case

10. On or about September 2, 1972, Rigby mailed to Respondent his personal check to cover the payments described above in paragraph 9.

11. On or about September 5, 1972, Respondent returned to Rigby the check described above in paragraph 10 because it was not submitted in the form specified by Respondent, as described above in paragraph 9.

12. On or about September 8, 1972, Respondent rejected Rigby's application for membership.

13. On or about September 18, 1972, Respondent requested Telco to terminate the employment of Rigby for failure to comply with the terms of the "Agency Shop" provision, described above in paragraph 6.

14. By the acts described above in paragraph 13 and by each of said acts, Respondent restrained and coerced, and is restraining and coercing employees in the exercise of rights guaranteed in Section 7 of the Act, and thereby engaged in, and is engaging in, unfair labor practices affecting commerce within the meaning of Section 8(b)(1)(A) and Section 2(6) and (7) of the Act.

15. By the acts described above in paragraph 13 and by each of said acts, Respondent caused and attempted to cause, and is causing and attempting to cause an employer to discriminate against employees with respect to whom membership in Respondent has been denied on some ground other than their failure to tender the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership, and thereby engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(b)(2) and Section 2(6) and (7) of the Act.

16. The acts of Respondent described above in paragraph 13 occurring in connection with the operations of Telco, described above in paragraph 2, have a close, inti-

mate, and substantial relation to trade, traffic and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

PLEASE TAKE NOTICE that on the 8th day of March 1973, at 11:00 a.m., at 16 Court Street, Fourth Floor, in the Borough of Brooklyn, State of New York, a hearing will be conducted before a duly designated Administrative Law Judge of the National Labor Relations Board on the allegations set forth in the above Complaint, at which time and place you will have the right to appear in person, or otherwise, and give testimony. Form NLRB-4668, Statement of Standard Procedure in Formal Hearings Held Before the National Labor Relations Board in Unfair Labor Practices Cases, is attached.

You are further notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, the Respondent shall file with the undersigned Regional Director, acting in this matter as agent of the National Labor Relations Board, an original and four (4) copies of an answer to said Complaint within ten (10) days from the service thereof, and that unless it does, so all of the allegations in the Complaint shall be deemed to be admitted by it to be true and may be so found by the Board. Immediately upon the filing of its answer, Respondent shall serve a copy thereof on each of the other parties.

Dated at Brooklyn, New York this 31st day of January, 1973.

s/ SAMUEL M. KAYNARD
Regional Director
National Labor Relations Board
Region 29
16 Court Street
Brooklyn, New York 11241

Answer of Local 1104 in Rigby Case
(General Counsel's Exhibit 1e)

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

Case No. 29-CB-1347-3

[SAME TITLE]

Respondent, Local 1104, Communications Workers of America, AFL-CIO, by their attorneys, Kane and Koons, Esqs., and Cohn, Glickstein, Lurie, Ostrin & Lubell, Esqs., for its Answer to the Complaint herein alleges:

1. Denies the allegations contained in paragraph "4" of the Complaint.

2. Denies the allegations contained in paragraph "5" of the Complaint, except admits that Respondent and Telco have performed, maintained and given effect to an existing collective bargaining agreement between Communications Workers of America, AFL-CIO (hereinafter called "CWA"), of which Respondent is a constituent Local, and Telco, relating to the hire, tenure and other terms and conditions of employment of Telco's employees in the unit covered by said agreement.

3. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph "7" of the Complaint, except admits that at all times material herein Rigby has been employed by Telco within the unit covered by the aforesaid collective bargaining agreement.

4. Denies the allegations contained in paragraph "14" of the Complaint.

Answer of Local 1104 in Rigby Case

AS AND FOR A FIRST SEPARATE DEFENSE

5. By letter dated September 2, 1972 addressed to G. Peter Theobolt, Treasurer of Respondent Union, Rigby reiterated his earlier request for admission to Union membership.

6. On information and belief, Rigby's tender of dues, as more specifically described in paragraph "10" of the Complaint, was conditioned upon his acceptance into membership in Respondent Union.

7. Respondent's rejection of Rigby's application for membership was predicated upon his dual union activities in favor of the International Brotherhood of Teamsters, to the detriment of Respondent and CWA.

8. Respondent's rejection of Rigby's application for membership, for the reasons set forth in paragraph "7" of this Answer, was privileged within the meaning of Section 8(b)(1)(A) of the Act, and the General Counsel of the Board so determined in his Decision denying, in part, the Regional Director's refusal to issue a Complaint on Rigby's Charge. A photocopy of the General Counsel's determination is annexed hereto as Exhibit "A".

AS AND FOR A SECOND SEPARATE DEFENSE

9. Respondent is a constituent Local of CWA, a labor organization representing persons employed in the communications industry throughout the United States.

10. CWA is the certified collective bargaining representative of Telco's Plant Department employees in the State of New York and a portion of the State of Connecticut, and is party to the collective bargaining agreement to

which reference is made in paragraph "5" of the Complaint. Telco is the only other party to the said agreement.

11. At all times material herein, Respondent and other constituent Locals of CWA have participated with CWA in the administration of the aforesaid collective bargaining agreement.

12. At all times material herein, Respondent has received membership and "Agency Shop" dues, directly or from Telco, pursuant to dues deduction authorizations executed by its members and non-members covered by the aforesaid collective bargaining agreement; and has paid over to CWA a portion of said dues and retained the balance thereof as compensation for their services rendered, as set forth in paragraphs "10" and "11" of this Answer.

13. At all times material herein, Rigby, as a Telco employee covered by the aforesaid collective bargaining agreement, has been fully represented by respondent and CWA in matters pertaining to his wages, hours and working conditions, irrespective of his non-membership in Respondent Union.

14. As a non-member of Respondent Union, Rigby, at all times material herein, has received the benefits of the representation accorded him by Respondent and CWA, without assuming or incurring any financial obligation therefor.

15. The "Agency Shop" provision referred to in paragraph "6" of the Complaint (Article 33.01 of the collective bargaining agreement) provides in its relevant portion as follows:

Answer of Local 1104 in Rigby Case

> "Each regular employee shall, as a condition of employment, pay or tender to the Union amounts equal to the periodic dues applicable to members for the period beginning 30 days after hire or 30 days after February 17, 1972, whichever occurs later, until the termination of this collective bargaining agreement * * *."

16. Compliance by Telco employees with the "Agency Shop" provision contained in the aforesaid collective bargaining agreement is a condition of employment.

17. Rigby has failed and refused to comply with said "Agency Shop" provision. Accordingly, Respondent's request that Telco terminate his employment does not violate the Act.

WHEREFORE, Respondent prays that the Complaint be dismissed in its entirety.

Dated, New York, New York
February 12, 1973

KANE AND KOONS
Attorneys for Respondent
1100 Seventeenth Street, N.W.
Washington, D.C. 20036

COHN, GLICKSTEIN, LURIE, OSTRIN & LUBELL
Attorneys for Respondent
By /s/ H. HOWARD OSTRIN
Member of the Firm
1370 Avenue of the Americas
New York, New York 10019
Tel. (212) 757-4000

Exhibit A

To: REGIONAL DIRECTOR
Twenty-ninth Region
National Labor Relations Board
16 Court Street

Brooklyn, New York 11201
SAUL SCHEIER, ESQ.
Law Department
New York Telephone Company
140 West Street
New York, New York 10007

Exhibit "A"

(Letterhead of National Labor Relations Board)

Office of the General Counsel
Washington, D.C. 20570

January 16,1973

Re: Local 1104, CWA, AFL-CIO
(New York Telephone Company)
Case No. 29-CB-1347-3

Frederick D. Braid, Esq.
Rains, Pogrebin & Scher
210 Old Country Road
Mineola, New York 11501

Dear Mr. Braid:

Your appeal in the above matter has been duly considered.

The appeal is sustained in part and denied in part. The investigation did not establish that the Union unlawfully refused to accept Rigby into membership. Rather the evidence establish that the Union re[illegible]sed to accept him into

membership because he had engaged in dual unionism by attempting to replace the incumbent Union with Teamsters, which refusal was privileged under Section 8(b)(1)(A) of the Act. Moreover, the maintenance by the Union of a dental plan which was available to members only was not deemed violative of the Act since the Company's participation in the plan was confined to the payroll check-off of contributions voluntarily authorized by each participating member and did not include any financial contribution to or control over the plan by the Company. Thus, the plan did not constitute a term or condition of employment for employees in the bargaining unit and was deemed to constitute an internal Union benefit.

It was concluded, however, that the allegation that the Union violated Section 8(b)(1)(A) and (2) of the Act by its action in requesting that the Company discharge Rigby for failing to properly tender dues when Rigby had been denied full membership in the Union after having applied for such membership raised issues warranting Board determination on the basis of record testimony. Accordingly this case is remanded to the Regional Director for issuance of an appropriate 8(b)(1)(A) and (2) complaint, absent settlement. All further inquiries should be addressed to the Regional Director.

Very truly yours,

PETER G. NASH
General Counsel

By /s/ ROBERT E. ALLEN
Director, Office of Appeals

cc: Director, Region 29
(see next page)

Notice to Amend Answer in Rigby Case

CERTIFIED MAIL

Re: Case No. 29-CB-1347-3

Wellington G. Rigby, 30 North Millpage Drive, Bethpage, N.Y. 11714; Local 1104, CWA, AFL-CIO 6901 Jericho Turnpike, Syosset, N.Y. 11791; Morton Bahr, Vice-Pres., Dist. 1, CWA, 85 Worth St., N.Y., N.Y. 10013; Howard Ostrin, 1370 Ave. of Americas, N.Y., N.Y. 10019; S. Schier, Esq., N.Y. Telephone Co., 140 West Street, N.Y., N.Y. 10007

Notice to Amend Answer in Rigby Case
(General Counsel's Exhibit 1j)

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

Case No. 29-CB-1347-3

LOCAL 1104, COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO

—and—

WELLINGTON G. RIGBY, AN INDIVIDUAL

Sirs:

PLEASE TAKE NOTICE that at the commencement of the hearing in the above captioned matter, the undersigned attorneys for Respondent Local 1104 will move to amend the Answer heretofore filed herein in the following respects:

1. Deny paragraphs "15" and "16" of the Complaint.

Notice to Amend Answer in Rigby Case

2. Amend paragraphs "13" and "14" of the Answer heretofore filed herein to read as follows:

"13. At all times material herein, Rigby, as a Telco employee, and other non-members in Respondent Union covered by the aforesaid collective bargaining agreement, have been fully represented by Respondent and CWA in matters pertaining to their wages, hours and working conditions, irrespective of their non-membership in Respondent Union."

"14. As non-members of Respondent Union, Rigby and other non-members, at all times material herein, have received the benefits the representation accorded them by Respondent and CWA, without assuming or incurring any financial obligation therefor."

Dated: New York, New York
April 6, 1973

KANE AND KOONS
Attorneys for Respondent
1100 Seventeenth Street, N.W.
Washington, D.C. 20036

COHN, GLICKSTEIN, LURIE, OSTRIN & LUBELL
Attorneys for Respondent
By /s/ H. HOWARD OSTRIN
Member of the Firm
1370 Avenue of the Americas
New York, New York 10019
Tel. (212) 757-4000

Notice to Amend Answer in Rigby Case

To: REGIONAL DIRECTOR
Twenty-ninth Region
National Labor Relations Board
16 Court Street
Brooklyn, New York 11201

SAUL SCHEIER, ESQ.
Law Department
New York Telephone Company
140 West Street
New York, New York 10007

FREDERICK D. BRAID, ESQ.
Rains, Pogrebin and Scher
210 Old Country Road
Mineola, New York 11501

Charge in Telco Case
(General Counsel's Exhibit 1k)

(Mounted Opposite)

(12-65) Budget Bureau No. 64-R0012

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS

INSTRUCTIONS: File an original and 3 copies of this charge and an additional copy for each organization, each local and each individual named in item 1 with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

Case No. 29-CB-1426

Date Filed 2-2-73

1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT

a. Name: Local 1101 AFL-CIO Communications Workers of America

b. Union Representative to Contact: E. Dempsey, President

c. Phone No.: 369-[illegible]

d. Address (Street, city, State and ZIP code): One Park Avenue, New York, New York 10016

e. The above-named organization(s) or its agents has (have) engaged in and is (are) engaging in unfair labor practices within the meaning of section 8(b), subsection(s) (1)(A) and (2) (List Subsections) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

Since on or about December 4, 1972, Local 1101, Communications Workers of America, AFL-CIO, has been and is continuing to violate Sections 8(b)(1)(A) and 8(b)(2) of the National Labor Relations Act, as amended, by insisting that New York Telephone Company (Telco) discharge employees for failure to make payments of amounts equal to Union dues to the CWA pursuant to the Agency Shop provisions of the collective bargaining agreement in effect between Telco and CWA, while at the same time denying membership in CWA to those employees for reasons other than their failure to tender the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership. A list of employees whose discharge has been requested is annexed hereto.

By the above and other acts, the above named labor organization has restrained and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.

3. Name of Employer: New York Telephone Company

4. Location of Plant Involved (Street, city, State and ZIP code): 140 West Street, New York, New York 10007

5. Type of Establishment (Factory, mine, wholesaler, etc.): Public Utility

6. Identify Principal Product or Service: Telephone Service

7. No. of Workers Employed: approx. 100,[illegible]

8. Full Name of Party Filing Charge: New York Telephone Company

9. Address of Party Filing Charge (Street, city, State and ZIP code): 140 West Street, New York, New York 10007

10. Telephone No.: 394-[illegible]

11. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By [signature] (Signature of representative or person making charge)

Assistant Vice President-Labor Relations (Title or office, if any)

RAYMOND E. WILLIAMS

Address 140 West Street, N.Y., N.Y. 394-4376 (Telephone number) 2/1/73 (Date)

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

GPO 885-456

[On Letterhead of]

LOCAL 1101

Communications Workers of America, AFL-CIO
One Park Avenue, New York, N.Y. 10018

December 4, 1972

Mr. A. Vanleusen
New York Telephone Company
[illegible] Madison Ave.
New York, N.Y. 10017

Dear Mr. Vanleusen:

The below listed employees are to be terminated immediately because of the failure of the New York Telephone Company to process the payroll deduction cards for said employees:

N. Phitts	SS#118-40-1431	PC#6105
R. Belloli	051-42-3153	6160
T.R. Hecker	120-38-8103	6160
J.J. Martinez	098-14-5357	6225
J.J. Schreiner	087-26-1594	6261
C.L. Keeling	066-36-6776	6345
G. Arrigo	101-38-0524	6360
C. Iwanyszyn	148-26-0517	6360
W. Jurczyszyn	137-26-8168	6360
M. Mykalko	121-03-3915	6360
M. Semanik	086-28-4338	6360
T.F. Braithwaite	071-26-1804	6379
E. Cartagena	088-42-4536	6509
D. MacMillan	058-05-4242	6519
C.A. Bryan	580-09-8564	6523
J.J. Fiumano	118-38-9377	6524
O.N. Singh	054-48-2974	6573
L.E. Pantin	106-44-7989	6575
R.S. Molliden	069-26-6439	6583
E.T. Sullivan	058-05-4202	6583
J.R. Swart	121-07-5297	6583
A.E. Allen	082-40-0265	6727
J.A. Duff	104-28-4285	6736
D.E. Godwin	099-40-5141	6787
W.Y. Poon	095-44-8011	6949
J.J. Felis	122-36-6678	7310
J.C. Tinsley	256-32-5859	7310
A.W. Johnson	115-05-1526	6654

A.V. Perillo	SS#076-32-1987	PC#6654
G.T. St. Louis	119-42-2153	6654
J. Munday	082-24-4137	6874
F.H. Fyall	249-76-0561	6879
F.L. Brown	488-46-7233	6880
M.P. Cava	096-36-9481	6882
L.L. Jones	128-14-5954	6942
W. Haydak	111-38-3457	6943

Sincerely,

John Keefe,
Secretary

JK:sc
opeiu-153
afl-cio

Amended Complaint in Telco Case
(General Counsel's Exhibit 1dd)

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

Case No. 29-CB-1426

LOCAL 1101, COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO

and

NEW YORK TELEPHONE COMPANY

It having been charged by New York Telephone Company, herein called Telco, that Local 1101, Communications Workers of America, AFL-CIO, herein called Respondent, has engaged in, and is engaging in, certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 29 U.S.C., Sec. 151, *et seq.*, herein called the Act, the General Counsel of the National Labor Relations Board, herein called the Board, by the undersigned Regional Director for Region 29, pursuant to Section 10(b) of the Act and the Board's Rules and Regulations—Series 8, as amended, Section 102.15, hereby issues this Amended Complaint and Notice of Hearing and alleges as follows:

1. The Charge in this proceeding was filed by Telco on February 2, 1973, and served by registered mail upon Respondent on or about February 2, 1973.

2. (a) Telco is, and has been at all times material herein, a corporation duly organized under, and existing by virtue of, the laws of the State of New York.

(b) At all times material herein, Telco has maintained its principal office and place of business at 140 West Street, in the City and State of New York, and various other places of business in the State of New York where it is, and has been at all times material herein, continuously engaged in providing telephone communication and related services.

(c) During the past year, which period is representative of its annual operations generally, Telco in the course and conduct of its operations, derived gross revenues therefrom in excess of $500,000.

(d) During the past year, Telco, in the course and conduct of its business, purchased, and caused to be transported and delivered to its place of business in New York State, telephone cable, wire, and other goods and materials valued in excess of $50,000, of which goods and materials valued in excess of $50,000 were transported and delivered to its place of business in interstate commerce, directly from states of the United States other than the State of New York.

(e) Telco is, and has been at all times material herein, an employer engaged in commerce, and in an industry affecting commerce, within the meaning of Section 2(2), (6) and (7) of the Act.

3. Respondent is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

4. At all times material herein, Communications Workers of America herein called CWA, of which Respondent is a constituent Local is the exclusive recognized bargaining

agent of a unit of certain employees of Telco employed within the State of New York, exclusive of all guards, watchmen, professional employees, supervisors as defined in the Act, and employees regularly performing confidential labor relation duties.

5. At all times material herein, and effective since on or about July 18, 1971, Respondent and Telco have performed, maintained, and given effect to an existing collective bargaining agreement between CWA and Telco, relating to the hire, tenure and other terms and conditions of employment of the employees of Telco in the unit described above in paragraph 4.

6. On or about July 31, 1968, CWA and Telco entered into a collective bargaining agreement relating to the wages, hours and other terms and conditions of employment of the employees of Telco in the unit described above in paragraph 4, which agreement was to remain effective until July 28, 1971.

7. On or about May 24, 1971, CWA served a notice upon Telco of its desire for modification of the agreement described above in paragraph 6, as required by Section 8(d)(1) of the Act.

8. On or about June 21, 1971, CWA served notices upon the Federal Mediation and Conciliation Service and the New York State Mediation Board of the existence of a dispute between CWA and Telco as required by Section 8(d)(3) of the Act.

9. On July 14, 1971, Respondents and CWA authorized and engaged in a strike against Telco for the purpose of modifying the collective bargaining agreement between CWA and Telco then in effect, and said strike continued until on or about February 17, 1972.

Amended Complaint in Telco Case

10. CWA and Respondents engaged in the strike as described above in paragraph 9 on furtherance of its desire to modify the agreement described above in paragraph 6, notwithstanding that they did not 60 days prior to said strike notify Telco of their intent to modify the existing collective bargaining agreement, that they did not 30 days prior to said strike notify the Federal Mediation and Conciliation Service and the New York State Mediation Board of the existence of the dispute between Respondent and the Company, and that the collective bargaining agreement between Telco and CWA had not yet expired, all of which action failed to conform to the requirements of Sections 8(d)(1)(3) and (4) of the Act.

11. At all times material herein, the collective bargaining agreement described above in paragraph 5 has included an "Agency Shop" provision whereby "Each regular employee shall, as a condition of employment, pay or tender to the Union amounts equal to the periodic dues applicable to members for the priod beginning 30 days after hire or 30 days after February 17, 1972, whichever occurs later, until the termination of the collective bargaining agreement."

12. At all times material herein, the following named individuals have been employed by Telco within the bargaining unit described above in paragraph 4.

Mary Semanicki	Tyrone Hecker
Guiseppe Arrigo	Alice Allen
C. Clumysun	Anthony Perillo
Leon Pantin	William Haydak
Onkar Singh	Donald Mac Millan
J. R. Swart	Carl Bryan

Clarence Meekins	John Schreiner
Frank Fyall	Nelson Phitts
Joseph Fiumano	John Munday
Wun Yee Poon	John Martinez
Frederick Brown	Lala Jones
Remo Bellioli	Douglas Goodman
Theodore Braithwaite	Mary Myhalko
Eugene Sullivan	W. Jurevyszyn
Gordon St. Louis	

13. On various dates in the month of July 1972, the individuals named above in paragraph 12 and other employees of Telco whose identities are presently unknown, herein collectively referred to as the Telco employees, applied for membership in Respondent.

14. (a) On or about August 18, 1972, Respondent rejected the applications for membership of the Telco employees set forth in paragraph 12 above and other employees whose identities are presently unknown.

(b) Respondent rejected said applications because said employees had crossed Respondent's picket line established during its strike against Telco from July 1971 to February 1972, described above in paragraphs 5, 9 and 10.

15. On or about December 4, 1972, Respondent requested Telco to terminate the employment of the Telco employees for failure to comply with the terms of the "Agency Shop" provision, described above in paragraph 6.

16. By the acts described above in paragraphs 14 and 15 and by each of said acts, Respondent restrained and coerced, and is restraining and coercing employees in the

exercise of rights guaranteed in Section 7 of the Act, and thereby engaged in, and is engaging in, unfair labor practices affecting commerce within the meaning of Section 8(b)(1)(A) and Section 2(6) and (7) of the Act.

17. By the acts described above in paragraph 15 and by each of said acts, Respondent caused and attempted to cause, and is causing and attempting to cause an employer to discriminate against employees with respect to whom membership in Respondent has been denied on some ground other than their failure to tender the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership, and thereby engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(b)(2) and Section 2(6) and (7) of the Act.

18. The acts of Respondent described above in paragraphs 14 and 15 occurring in connection with the operations of Telco, described above in paragraph 2, have a close, intimate, and substantial relation to trade, traffic and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

PLEASE TAKE NOTICE that on the 24th day of October, 1973, at 11:00 a.m., at 16 Court Street, Fourth Floor, in the Borough of Brooklyn, State of New York, as heretofore scheduled a hearing will be conducted before a duly designated Administrative Law Judge of the National Labor Relations Board on the allegations set forth in the above Amended Complaint, at which time and place you will have the right to appear in person, or otherwise, and give

testimony. Form NLRB-4668, Statement of Standard Procedure in Formal Hearings Held Before the National Labor Relations Board in Unfair Labor Practice Cases, is attached.

You are further notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, the Respondent shall file with the undersigned Regional Director, acting in this matter as agent of the National Labor Relations Board, an original and four (4) copies of an answer to said Amended Complaint within ten (10) days from the service thereof, and that unless it does so, all of the allegations in the Amended Complaint shall be deemed to be admitted by it to be true and may be so found by the Board. Immediately upon the filing of its answer, Respondent shall serve a copy thereof on each of the other parties.

Dated at Brooklyn, New York this 12th day of October, 1973.

/s/ SAMUEL M. KAYNARD
Regional Director
National Labor Relations Board
Region 29
16 Court Street
Brooklyn, New York 11241

Answer to Amended Complaint in Telco Case (General Counsel's Exhibit 1ff)

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

Case No. 29-CB-1426

[SAME TITLE]

Respondent, Local 1101, Communications Workers of America, AFL-CIO, by their attorneys, Kane and Koons, Esqs., and Cohn, Glickstein, Lurie, Ostrin & Lubell, Esqs., for its Answer to the Amended Complaint herein alleges:

1. Denies the allegations contained in paragraphs "9", "10", "11", "16", "17", and "18" of the Amended Complaint.

2. Denies the allegations contained in paragraph "14 (b)" of the Amended Complaint, except admits that on or about August 18, 1972, the employees referred to in paragraphs "12" and "14(a)" of the Amended Complaint were denied membership in Respondent's Union because of their refusal to support Respondent's sympathy strike on behalf of Local 1190, Communications Workers of America, AFL-CIO, which Local was then engaged in a lawful economic strike against Western Electric Company (Installation Unit).

3. Denies the allegations contained in paragraph "15" of the Amended Complaint except admits that the Respondent requested Telco to terminate the employment of the Telco employees for failure to comply with the terms of the "Agency Shop" provision described in paragraph "11" of the Amended Complaint.

Answer to Amended Complaint in Telco Case

AS AND FOR A FIRST SEPARATE DEFENSE

4. Respondent's rejection of the application for membership of the individuals referred to in paragraphs "12" and "14(a)" of the Amended Complaint was privileged within the meaning of Section 8(b)(1)(A) of the Act.

AS AND FOR A SECOND SEPARATE DEFENSE

5. Respondent is a constituent Local of CWA, a labor organization representing persons employed in the communications industry throughout the United States.

6. CWA is the certified collective bargaining representative of Telco's Plant Department employees in the State of New York and a portion of the State of Connecticut and is party to the collective bargaining agreement to which reference is made in paragraph "5" of the Amended Complaint. Telco is the only other party to the said agreement.

7. At all times material herein, Respondent and other constituent Locals of CWA have participated with CWA in the administration of the aforesaid collective bargaining agreement.

8. At all times material herein, Respondent has received membership and "Agency Shop" dues, directly or from Telco, pursuant to dues deduction authorizations executed by its members and non-members covered by the aforesaid collective bargaining agreement; and has paid over to CWA a portion of said dues and retained the balance thereof as compensation for their services rendered, as set forth in paragraphs "6" and "7" of this Answer.

9. At all times material herein, the individuals named in paragraphs "12" and "14(a)" of the Amended Com-

plaint, and other non-members in Respondent Union, have been fully represented by Respondent and CWA in matters pertaining to their wages, hours and working conditions, irrespective of their non-membership in Respondent Union.

10. As non-members of Respondent Union the individuals named in paragraphs "12" and "14(a)" of the Amended Complaint, and all other non-members in Respondent Union, at all times material herein, have received the benefits of the representation accorded them by Respondent and CWA, without assuming or incurring any financial obligation therefor.

11. The "Agency Shop" provision referred to in paragraph "11" of the Amended Complaint (Article 33.01 of the collective bargaining agreement) provides in its relevant portion as follows:

> "Each regular employee shall, as a condition of employment, pay or tender to the Union amounts equal to the periodic dues applicable to members for the period beginning 30 days after hire or 30 days after February 17, 1972, whichever occurs later, until the termination of this collective bargaining agreement * * *."

12. Compliance by Telco employees with the "Agency Shop" provision contained in the foresaid collective bargaining agreement is a condition of employment.

13. The individuals named in paragraphs "12" and "14(a)" of the Amended Complaint have failed and refused to comply with said "Agency Shop" provision. Accord-

ingly, Respondent's request that Telco terminate their employment does not violate the Act.

AS AND FOR A THIRD SEPARATE DEFENSE

14. On information and belief, no charge was filed within six (6) months from the date of the purported strike as alleged in paragraphs "9" and "10" of the Amended Complaint.

15. By reason therefor, the unfair labor practices as alleged in the Amended Complaint are barred by Section 10(b) of the Act.

WHEREFORE, Respondent prays that the Amended Complaint be dismissed in its entirety.

Dated: New York, New York
October 17, 1973.

KANE AND KOONS
Attorneys for Respondent
1100 Seventeenth Street, N.W.
Washington, D.C. 20036

COHN, GLICKSTEIN, LURIE, OSTRIN & LUBELL
Attorneys for Respondent
By
H. Howard Ostrin,
Member of the Firm
1370 Avenue of the Americas
New York, New York 10019
Tel. (212) 757-4000

Excerpts from Collective Bargaining Agreement Effective July 18, 1971 between New York Telephone Company and CWA

To: REGIONAL DIRECTOR
Twenty-Ninth Region
National Labor Relations Board
16 Court Street
Brooklyn, New York 11201

BERNARD YAKER, ESQ.
Law Department
New York Telephone Company
140 West Street
New York, New York 10007

Excerpts from Collective Bargaining Agreement Effective July 18, 1971 between New York Telephone Company and CWA
(General Counsel's Exhibit 2)

AGREEMENT

This collective Bargaining Agreement is between the NEW YORK TELEPHONE COMPANY and the EMPIRE CITY SUBWAY COMPANY (LIMITED), and the COMMUNICATIONS WORKERS OF AMERICA, hereinafter called the Union. In consideration of the covenants and terms herein contained, the parties hereto agree:

ARTICLE I

Recognition

1.01 The Company hereby recognizes the Union as sole and exclusive representative for the purpose of collective bargaining with respect to rates of pay, wages, hours and other terms and conditions of employment for the following certified unit of employees:

Included: 1) All employees in the Plant Department of the New York Telephone Company, 2) All employees in

the Empire City Subway Company (Limited), 3) Those employees in the Network Operations Department who are performing job functions which were included under the CWA bargaining unit representation when this work was a function of the Trunk Facilities Group, 4) All Engineering Department employees in Upstate and those Engineering Department employees in Downstate performing construction work which was included under the representation of the CWA bargaining unit when that work was a Plant Department function, 5) Those Commercial Department employees performing coin telephone installation, repair and maintenance work and those Executive Department employees performing building, motor vehicle, and supply services which were included under the representation of the CWA bargaining unit when this work was a Plant Department function.

Excluded: All guards, watchmen, professional employees, supervisors as defined in the National Labor Relations Act, as amended, and employees regularly performing confidential labor relations duties.

* * *

ARTICLE 33

Agency Shop

33.01 Each regular employee shall, as a condition of employment, pay or tender to the Union amounts equal to the periodic dues applicable to members for the period beginning 30 days after hire or 30 days after February 17, 1972, whichever occurs later, until the termination of this collective bargaining agreement, except that an employee may terminate this condition of employment by giving a

written individual notice to the Company and the Union of such termination by certified or registered mail, return receipt requested, and postmarked between July 8, 1974 and July 17, 1974 both dates inclusive.

33.02 The condition of employment specified in Section 33.01 shall not apply during periods of formal separation* from the bargaining unit by any such employee but shall reapply to such employee on the 30th day following his return to the bargaining unit.

* The term "formal separation" includes transfers out of the bargaining unit, removal from the payroll of the Company, and leaves of absence of more than one month duration.

33.03 The provisions of this Article shall not be effective if inconsistent with the law of the applicable State.

33.04 The Company may inform employees and applicants for employment of their rights and obligations under the provisions of this Article.

* * *

ARTICLE 40

Duration of Agreement

40.01 This Agreement, effective as of July 18, 1971, shall continue in force and effect until terminated as provided in Section 40.02.

40.02 By notifying the other party in writing at least 60 days prior to July 18, 1974 either party may terminate this Agreement at 11:59 P.M. on July 17, 1974.

If no such notice of termination is given, this Agreement shall automatically continue in full force and effect

after July 17, 1974, for successive renewal periods of one year each, subject to the right of either party to terminate this Agreement at the end of any renewal period by notifying the other party in writing at least 60 calendar days prior to the date of termination, of its intention to terminate this Agreement.

Transcript of Testimony

BEFORE THE NATIONAL LABOR RELATIONS BOARD
TWENTY-NINTH REGION

Case Nos. 29-CB-1347-3, 29-CB-1426

In the Matter of:

LOCAL 1104, COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO (New York Telephone Company),

—and—

WELLINGTON G. RIGBY, an Individual,

—and—

LOCAL 1101, COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO

—and—

NEW YORK TELEPHONE COMPANY.

16 Court Street
Brooklyn, New York
October 24, 1973

Pursuant to notice, the above-entitled matter came on for hearing at 11:00 o'clock a.m.

Transcript of Testimony

Before:

JOHN P. VON ROHR, *Administrative Law Judge.*

Appearances:

JOEL FRIEDMAN, ESQ. Counsel for the General Counsel.

FREDERICK D. BRAID, ESQ., Of Counsel
Rains. Pogrebin & Scher, Esqs.
110 E. 59th Street
New York, New York
Appearing on behalf of Wellington G. Rigby.

H. HOWARD OSTRIN, ESQ., Of Counsel
Cohn, Glickstein, Lurie, Ostrin & Lubell, Esqs.,
1370 Avenue of the Americas
New York, New York
Appearing on behalf of Local 1101.

CONTENTS

No witnesses were examined.

General Counsel's:

Exhibits:	*For Identification*	*In Evidence*	*Rejected*
1A-1GG		8	
2	24	24	
3	28	28	

Charging Party's

1	33		33
2	33		33
3	34		34

Transcript of Testimony

(4) PROCEEDINGS

Hearing Officer: The hearing will be in order.

This is a hearing before the National Labor Relations Board in the matter of Local 1104, Communications Workers of America, AFL-CIO (New York Telephone Company) and Wellington G. Rigby, an Individual and Local 1101, Communications Workers of America, AFL-CIO and New York Telephone Company; case number 29-CB-1347-3 and 29-CB-1426.

The Administrative Law Judge conducting this hearing is John P. VonRohr. That is spelled V-o-n, R-o-h-r.

Will counsel please state their appearances, first for the General Counsel.

Mr. Friedman: For the General Counsel, Joel H. Friedman.

Mr. Ostrin: For the respondent Cohn, that is C-o-h-n, Glickstein, Lurie, Ostrin & Lubell, by J. R. Ostrin. You want the address?

Hearing Officer: Yes.

Mr. Ostrin: 1370 Avenue of the Americas, New York, 10019.

Hearing Officer: And for the charging party.

Mr. Braid: For the charging party, Rains, Pogrebin & Scher, by Frederick D. Braid. 210 Old Country Road, Mineola, New York.

Hearing Officer: Now, before we went on the record (5) this morning I was advised that counsel for the other charging party, that is New York Telephone Company, who is Mr. Yaker could not be here this morning due to illness.

He has asked that the case be postponed until tomorrow.

However, counsel for the union, that is Mr. Ostrin,

indicated that it is impossible for him to be here tomorrow, and therefore he has moved for adjournment beyond tomorrow.

Is that correct, Mr. Ostrin, have I stated your position?

Mr. Ostrin: To put it more correctly, I stated and I state now that now that I am ready to go ahead with both cases that if there is to be adjournment, it cannot be tomorrow, it would have to be at some time about three or four weeks hence.

Hearing Officer: Very well. So if I can cover the additional facts involved here briefly, the charging party in the first case, that is Mr. Rigby, is here with his attorney, Mr. Braid, and Mr. Braid has indicated that he would like to call his witness for some testimony today.

The company is not a party to his case. Now, Mr. Yaker indicated over the telephone, I am advised, I did not speak to him, but the General Counsel has advised me, that Mr. Yaker would like to be present for the testimony (6) of this witness.

On the other hand, Mr. Ostrin indicated that if we proceeded with the testimony of this witness today, he could have someone else from his office present tomorrow to enter into certain stipulations, which I understand will be agreeable to all parties, including the company and the General Counsel.

Under all the circumstances, rather than to defer this case for another three or four weeks, I have off the record advised the parties that I intend to proceed with Mr. Rigby's case tomorrow.

We will proceed with—rather today. We will proceed with the case involving the charging party, that is New York Telephone Company, tomorrow.

And all parties will be represented for that aspect of the case then. So I think that covers it.

Mr. Ostrin: May I just make one thing clear, and that is, that while I do not object to the procedure that Your Honor has outlined, and will have someone from my office available to participate in the stipulations which we anticipate will be entered into tomorrow in case number 29-CB-1426, it is with the distinct understanding that there will be no testimony elicited in the 1426 case tomorrow.

Hearing Officer: Well, as I understand—

Mr. Ostrin: Because if there is, I would want an (7) adjournment.

Hearing Officer: As I understand it, and I want the record to be perfectly clear on this, Mr. Friedman has asserted to me that he has been assured by company counsel that the company does not intend to elicit any testimony, but that it will in fact agree to stipulations; is that correct?

Mr. Friedman: Yes.

Hearing Officer: And I also understand that the General Counsel does not intend to adduce any testimony from witnesses tomorrow.

Mr. Friedman: That is also correct.

Hearing Officer: Very well.

Mr. Ostrin: That's fine.

Mr. Braid: I am reluctant to proceed and foreclose anyone in the consolidated hearing from taking part in the hearing.

But I have spoken to Mr. Yaker on the telephone this morning, and his concern is merely that the Rigby case be held open so that he has an opportunity to intervene and prepare a brief on that case as well.

And he has been assured that he will have an opportunity to intervene.

Hearing Officer: That is correct. He may intervene in that case and he may state his position and file a (8) brief with respect to the other case also.

All right then with that, Mr. Friedman, will you proceed with the formal documents.

Mr. Friedman: Your Honor, at this time the General Counsel would like to offer into evidence General Counsel's Exhibit 1, being the formal documents in this proceeding.

They are lettered 1A through 1GG, and 1GG is the index and description of formal documents.

I have copies of the index for the parties.

Hearing Officer: Is there any objection?

Mr. Ostrin: I haven't seen the index.

(Mr. Friedman handed documents to Mr. Ostrin.)

Mr. Ostrin: We have no objection.

Hearing Officer: Charging party have any objection?

Mr. Braid: Charging party has no objection.

Hearing Officer: Well, I am certain that the company, that is New York Telephone Company, should not have any objection to these documents which have been previously served on all the parties, and I will receive them in evidence.

If for any reason the New York Telephone Company chooses to object tomorrow, I will take that under consideration at that time.

(Documents previously marked General Counsel's Exs. 1A-1GG received in evidence.)

(9) Hearing Officer: Mr. Friedman, I wonder if you could give me a brief opening statement concerning the issues in this case.

Mr. Friedman: Certainly, Your Honor.

Your Honor, the General Counsel has issued complaints

in this matter on the two basic cases here, which are those involving first Mr. Rigby, in which he is a charging party, and the other case, which is the CB-1426 which was filed by the telephone company in which the rights of a group of other employees are involved.

With regard to Mr. Rigby, it is alleged that Mr. Rigby was employed by the telephone company and prior to the time he became a, or prior to the time he applied for membership in Local 1104 of the C.W.A., he engaged in organizational activities on behalf of a Teamsters local.

And that as a result of this activity the union chose to deny his membership application, and that shortly thereafter the union sought his discharge under the terms of the agency shop provisions of the contract.

And that by seeking his discharge, they violated his rights. It is the General Counsel's belief that—

Hearing Officer: What's your position now?

Mr. Friedman: That with regard to Mr. Rigby, that it is under an agency shop, it is the option of the employee, whether he chooses to join the union or whether he services (10) his option to pay equivalent dues and amounts, dues and fees, but that the union can not lawfully deny membership to an individual and then force him to pay to them the equivalent amounts without affording him the privileges of membership.

Hearing Officer: Let me be perfectly clear on this point, there is no allegation, then, in the complaint or there's no issue before me that the union unlawfully denied him membership because of his activities on behalf of the Teamsters.

Mr. Friedman: That is correct, Your Honor. We acknowledge that under the proviso to Section 8B, 8B-1(A), the union has the right to prescribe rules for the member-

ship of its individuals, and that it does have the option of denying membership to people who it may feel might be organizers for another rival union.

However, having exercised that option they cannot then force an employee under threat of discharge to pay equivalent amounts.

In effect that Mr. Rigby is quite willing to pay the dues and amounts provided that he be admitted into membership and thus have a vote and all the privileges of membership.

I think this really comes under the foot note to the General Motors decision which leaves in the air exactly whose option under an agency shop, whose option it is—

(11) Hearing Officer: Did Mr. Rigby tender dues on the condition that he be received into membership?

Mr. Friedman: When he filed the application for membership, I believe that contained a provision for check-off which would be effective at that time and that when it was then rejected he refused to file a further authorization.

In other words, he would not provide for any check-off of any dues or fees unless he was admitted to membership.

Hearing Officer: I see. But the union did give him an opportunity to tender equivalent payments, is that correct? And he refused this?

Mr. Friedman: Yes, Your Honor.

Hearing Officer: And it is your contention he should not have been refused this, is that right or that the union—

Mr. Friedman: No, Your Honor. It is that he should not be forced under threat of discharge to execute such an alternative check-off whereas he was in fact already offered to join, have dues checked off on condition of being a member and they denied membership to him.

Hearing Officer: If you hold it right there. May I have the union's position with respect to the Rigby case?

Mr. Ostrin: Yes.

Your Honor, I think the union's position is quite (12) simple, and the issue perhaps, though difficult to resolve, is nevertheless is a very simply stated issue.

To begin with the union believes that it had every right to deny membership to Mr. Rigby because he did in fact engage in activities on behalf of a rival labor organization, namely the Teamsters.

Hearing Officer: All right.

The General Counsel doesn't quarrel with you up to this point.

Mr. Ostrin: No. We, a bit of a quarrel with the charging party in that respect.

Hearing Officer: Does the charging party take a different view?

Mr. Ostrin: That's where he gets into this area where he wants to introduce additional evidence which we claim is totally irrelevant.

Now, so far as the union's right to, on the one hand, lawfully deny an employee membership, and on the other, insist that that employee pay the equivalent of dues under an agency shop agreement, it is the union's position that it may insist that an employee who has been lawfully denied membership must as a condition of employment, pay the agency shop dues.

And the reason we say that, is, and we will develop this of course in our brief, is that the entire concept and (13) theory of an agency shop is to prevent freeloaders, union renders a service, the union has an obligation to represent all people in the bargaining unit whether or not they are members or nonmembers.

And since the union has that obligation, and since Rigby is the beneficiary of the union's representation, he should not be allowed to ride in on the union's coattails without paying dues.

And I think it would be eminently unfair and unjust if the union were to admit Rigby into membership and then have a member within the ranks who is, as has already been demonstrated, bent on destroying that union.

Hearing Officer: I think I understand your theory. Thank you.

Now, does the charging party have a different view of Mr. Rigby's case?

Mr. Braid: The charging party does not have a different view of the issue, the central issue that has been described by both Mr. Ostrin and the General Counsel, namely whether or not a union which has lawfully denied membership to an individual in the bargaining unit can then go ahead and demand that the individual pay dues and upon his failure to do so, demand his discharge.

The only thing that separates Mr. Rigby and the respondent, I believe, is that the respondent would like to (14) proceed from this point from the mere legal conclusion that Mr. Rigby was lawfully denied membership.

We agree that Mr. Rigby was lawfully denied membership, but there were facts upon which the General Counsel reached that conclusion.

Those same facts which led the General Counsel to believe that the union was within its rights to deny Mr. Rigby membership, could possibly have a bearing upon the second issue which we have all agreed is the central issue here, namely whether or not having denied an individual membership on these grounds, the union can then insist that the individual pay dues.

While our position is that under no circumstances can a union deny membership to an individual under an agency shop provision, and then demand that he pay dues, it's conceivable that possibly the decision could go in the respondent's favor, after all that's why we are here.

We both see the issue differently. In that event the particular facts that relate to Mr. Rigby may be the thing that creates an exception in his particular area because Mr. Rigby is an individual who was engaged in organizing activities for a rival labor organization.

But he did it while he was not a member of the Communication Workers.

If we were to carry the union's position to its (15) logical extention, we could conceivably have a situation where a previously unrepresented unit of employees was undergoing an organizing campaign by two vigorous opponents, union, two rival unions.

Conceivably the union that won could then negotiate an agency shop provisions, and then leave out everyone who was organizing or who was vigorously campaigning for an opponent.

This seems to be a tremendous abuse of the agency shop provision which we attempt—which we will show and demonstrate in our brief it is clear from the legislative history, was meant to provide an option for the employee and not the union.

What the union is attempting to do here is selectively take in people who it wants, people who will not give the union any trouble.

It's really an attempt to stifle union democracy. Mr. Rigby at no time was expelled from the Communication Workers, he had been a member previously and lawfully resigned.

He has at no time been expelled. He has at no time been fined. He has never been suspended for any dual union activities and was not engaged in dual unionism—

Mr. Ostrin: I object to a lot of this opening—

Hearing Officer: Of course these are—

Mr. Ostrin: —because it's completely outside the (16) scope of the pleadings.

It's outside the issue. General Counsel has ruled—we have the General Counsel's opinion apended to our answer and if Your Honor will just take a look at it, I think it becomes abundantly clear—

Mr. Braid: I would like to be heard through.

Hearing Officer: Let me take counsel's argument and I will hear from you later.

Mr. Ostrin: All right.

Mr. Braid: So Mr. Rigby has never been fined or disciplined by the Communications Workers for any activity. He meets all of the membership eligibility requirements as set forth in the constitution of the International, which are incorporated by reference in the by-laws of Local 1104.

It's essential to the admission of evidence concerning Mr. Rigby's meeting, all of the stated membership eligibility requirements in the Communication Workers, and the—just the general facts upon which the General Counsel did reach it's decision, that he had lawfully been denied membership, that Mr. Ostrin on behalf of the union objects to its admission.

Hearing Officer: Well, what is the step beyond General Counsel's theory that you wish to go into so far as this case is concerned?

Mr. Braid: We are arguing the same theory. All that (17) we want to do is to have the facts as they relate to Mr. Rigby in the record.

Hearing Officer: Why are they particularly relevant to the issue?

Mr. Braid: It's conceivable to me, although at the present time, it's our position that under no circumstances can a union deny membership to an individual and then insist that he pay dues under an agency shop provision.

But obviously Mr. Ostrin sees that issue differently, otherwise we wouldn't be here today.

So it's conceivable, if he is right, and the decision does come down in his favor, there may be particular facts which relate to Mr. Rigby which would lead the Board or Your Honor to decide that there may be some circumstances where a union can do it.

But on these facts as they relate to this individual, we think as a matter of policy, or for whatever reason, that this is a unconscionable position to take.

Mr. Rigby is an individual. He is a living person.

Hearing Officer: Is it your position that under these facts that the union unlawfully denied membership to him?

Mr. Braid: There is no argument that Mr. Rigby has been unlawfully denied membership. That's being accepted.

Hearing Officer: Right. All right. I think I (18) under what you are trying to bring out as far as this case is concerned.

All right. At this point then, let the General Counsel proceed with the charge filed by the New York Telephone Company.

I would like your statement of that part of the case.

Mr. Friedman: Your Honor, it is the General Counsel's position that with regard to the Telephone Company's charge that there were actually a—there was actually a two-fold violation.

In July of 1971, Your Honor, the Communication Workers of America, and particularly in this case, Local 1104 engaged in a strike which was unlawful under Section 8(D) of the Act.

The employees, although the legality or illegality of that strike is currently disputed, the respondent concedes that is the reason for their denial of membership to the individuals set forth in this complaint was because these people crossed the picket lines during that strike.

At a later time, after the strike ended, these people were confronted with the agency shop provision, and they again exercised their option by applying for membership in respondent.

And respondent again denied membership to these individuals.

(19) Now, the theory that—one of the theories General Counsel is going on, the one that was set forth in the initial complaint before amendment, was that when the respondent then sought the discharge of these employees for failing to render equivalent amounts, they were violating the Act just as they were with Mr. Rigby.

The General Counsel has however, amended the complaint to go one step further and say that even to deny membership to these individuals was a violation because all that they had done was refuse to cross and refuse to engage in an illegal strike.

Hearing Officer: From what you said, I take it that the issue as to whether the strike was protected or an illegal strike is not before me?

Mr. Friedman: Your Honor, it will be before you, but on this point, this is one of the points we will go into, we will be stipulating to a previous record.

This case has been litigaged and it's currently before the Board in fact for a determination.

Hearing Officer: Under your theory would it make any difference if the strike was protected or not protected.

Mr. Friedman: Yes, Your Honor.

Hearing Officer: As regards the reason for denying them membership and seeking their discharge?

Mr. Friedman: Yes, Your Honor. We feel that if it (20) was a fully lawful strike, again the respondent could perhaps deny membership to these individuals.

Again without touching on the question of whether they could then invoke the agency shop.

Hearing Officer: Assuming that it had this right to not accept them into membership, would you then proceed with your other aspect of the case, that not withstanding that fact, there was still a violation in that it sought to collect agency shop dues from them.

Mr. Friedman: It sought to discharge them because they refused to—

Hearing Officer: So even if the, one aspect of the case was found to be without merit, you would still proceed on the other aspect, the additional—

Mr. Friedman: Yes. The alternative theory is if the strike was unlawful and protected in violation of 8(D), there would be a public interest or that the union has no valid interest in expelling members for refusing to engage in an illegal strike which could have cost them their jobs in fact.

Hearing Officer: Off the record for a moment.

(Discussion off the record.)

Hearing Officer: On the record.

Mr. Ostrin: I would just like to add one thing. I have no dispute with the General Counsel as to what his (21) theory is in the charge filed by the company. But I would like the record to show that the—what the parties propose to stipulate in the—in case number 29-CB-1426 is the record in matter of New York Telephone Company, case number 2-CB-5172, which was tried in the second region, and that transcript consists, and that case was tried before Judge Benjamin K. Blackburn, on May 29, and May 30, 1973.

And the transcript consists of 224 pages. The reason I want that in the record now is because I am not going to be here tomorrow.

And I want to identify the transcript that's—that the parties are going to stipulate.

Hearing Officer: Very well. The record will reflect the transcript as being identified. Of course, it's a matter of official record in any event.

Well, off the record once more.

(Discussion off the record.)

Hearing Officer: On the record.

Mr. Friedman: Your Honor, the General Counsel would like to amend the complaint in 29-CB-1347-3 with regard to paragraphs four and five, so that paragraph four would read, "At all times material herein Communication Workers of America, herein called C.W.A., of which respondent is a constituent local, has been the exclusive recognized (22) bargaining agent of a unit of certain employees of Telco employed within the State of New York including those in Belmore, exclusive of all guards, watchmen, pro-

fessional employees, supervisor as defined in the Act, and employees regularly performing confidential labor relations duties."

Hearing Officer: Any objection to that amendment?

Mr. Ostrin: No objection.

Hearing Officer: Motion granted.

Mr. Friedman: With regard to paragraph five, we would similarly amend it so that it states, "At all times material herein and effective since on or about July 18, 1971 respondent and Telco have performed, maintained and given effect to assisting collective bargaining agreement between C.W.A., of which respondent is a constituent local and Telco relating to the hire, tenure and other terms and conditions of employment of the employees of Telco in the unit described above in pargraph four.

Mr. Ostrin: We have no objections to that.

Hearing Officer. Motion granted.

Mr. Friedman: Similarly, Your Honor, I think also perhaps at this time we ought to, as you have noted in the amended complaint, in the other case, we did have a mistake that was in effect a typographical error, and that is that the—in paragraph 15 of that complaint where we refered to the agency shop provision described above in (23) paragraph six, we meant to state the agency shop provision described above in paragraph 11.

Hearing Officer: The complaint my be so amended.

Mr. Ostrin: I don't know whether it's in order now, we had served a notice of intention to amend our answer to the complaint in 29-CB-1347-3, a copy of that proposed amended answer is annexed to the formal papers as General Counscel's Exhibit 1J.

And I assume that Your Honor is granting the motion to amend?

Mr. Friedman: Your Honor, General Counsel has no objection to that.

Hearing Officer: Motion granted.

Now let the record show that we have been off the record for quite sometime before these amendments, and I think we have accomplished quite a bit in that the parties have agreed to certain stipulations which they will now put on the record and also I think we have narrowed the issues with respect to the charging parties' position, and I will rule upon them—upon those matters shortly.

Mr. Friedman: Your Honor, the General Counsel would like to introduce as General Counsel's Exhibit 2 and we understand we have a stipulation on this point, the—a copy of the contract between the New York Telephone Company and the Communication Workers of America, which is referred (24) to in the complaint.

Mr. Ostrin: We have no complaint.

Hearing Officer: Charging party have any objection?

Mr. Braid: No objection.

Hearing Officer: It is received.

(Above-referred to contract marked General Counsel's Ex. 2, for identification.)

(Contract previously marked General Counsel's Ex. 2 received in evidence.)

Mr. Friedman: Your Honor, General Counsel would like to introduce as General Counsel's 3, and again I understand we have a stipulation on this point, the request for payroll deductions signed by Mr. Wellington Rigby, I believe at the time of his application for membership in Local 1104.

Hearing Officer: Is there any objection?

Mr. Ostrin: I haven't seen it. I don't think there will be any objection and I would like to receive a copy of it.

Mr. Friedman: Certainly.

Mr. Braid: I would like to state for Mr. Rigby there have been a few filled out.

Off the record.

Hearing Officer: Off the record.

(Discussion off the record.)

Hearing Officer: On the record.

(25) Mr. Friedman: Your Honor, as part of our stipulation, General Counsel is not alleging and in fact is informed to the contrary that this is Mr. Rigby's original card submitted but rather we are submitting this card for your study as a sample of the cards which Mr. Rigby and in fact the other employees apparently signed, so that he may see the set-up of the card.

Hearing Officer: In other words, you are introducing the card only for whatever card it shows, and that the handwriting on it may be disregarded?

Mr. Friedman: Yes, Your Honor. With the exception that, and again I believe respondent will—is willing to stipulate that the box checked on this card, the first box is the box that Mr. Rigby and I believe the other employees did check.

Hearing Officer: Will you stipulate to that?

Mr. Ostrin: That he indicated that he wanted to be a member?

Mr. Friedman: Right.

Mr. Ostrin: Yes, we will so stipulate.

Hearing Officer: Do you have any objection to the card?

Mr. Ostrin: No objection.

Hearing Officer: It is received.

(26) Hearing Officer: All right.

Mr. Friedman: Your Honor, if counsel for respondent has no objection, I am informed that Mr. Braid would like to have this back.

So we would like to be able to substitute good xerox copies of the original showing both sides so that Mr. Braid may have his records complete.

Hearing Officer: Very well.

Mr. Friedman: Your Honor, the General Counsel also understands that we have a stipulation that would read as follows.

That respondent Local 1104's rejection of Rigby's application for membership as set forth in paragraph 12 of the complaint was predicated upon his union activities on behalf of a local of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America during the months prior to his application for membership.

Mr. Ostrin: I think we ought to go one step further, saying that the rejection was lawful and proper.

Hearing Officer: I don't know—that's stipulating to a conclusion.

He is just proposing a fact.

Mr. Ostrin: How will the record show, how will the Board know that Rigby was properly suspended for engaging in—denied membership for engaging in dual union (27) activities?

Mr. Friedman: Your Honor, General Counsel will state that we are not asserting that such refusal was unlawful at this point.

I would not want to preclude General Counsel in some further case at this date or some other date.

Mr. Ostrin: Will you add that?

Mr. Friedman: As a statement we are not asserting nor are we asking the Board to find that this denial to him was unlawful.

Hearing Officer: You have the General Counsel's position so in that event, why—

Mr. Ostrin: If you state that in the record, for the record that's all right.

Hearing Officer: He has already stated it.

Mr. Braid: I just like to make the—

Mr. Ostrin: I am not sure it's in the record.

Mr. Braid: I would like to make it very clear that Mr. Rigby has never bee nsuspended, fined or expelled from the Communication Workers.

Hearing Officer: All right.

Now, will you read the proposed stipulation again so there's no question about it?

Mr. Friedman: I understand that the stipulation itself is that respondent Local 1104's rejection (28) of Rigby's application for membership as set forth in paragraph 12 of the complaint was predicated upon his union activities on behalf of a local of the Intrnational Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America during the months prior to his application for membership.

Hearing Officer: Will you so stipulate?

Mr. Ostrin: So stipulate. But I think you were going to add something.

Mr. Friedman: Your Honor, I would like on the starred—

Hearing Officer: You so stipulate to the facts so far?

Mr. Ostrin: Yes.

Hearing Officer: Charging party so stipulates?

Mr. Braid: Yes.

Mr. Friedman: I would like that the General Counsel is not contending or asking the Board to find in this case that the denial of membership to Mr. Rigby was itself a violation.

Hearing Officer: Very well.

Now, I understand that the charging party wishes to introduce a copy of the union's constitution and by-laws.

Now, they are copies of those documents are there, and initially, I think, I can state that the—counsel for (29) the union does not challenge their authenticity. Is that correct?

Mr. Ostrin: That's correct.

Hearing Officer: All right, then.

Mr. Ostrin: I do object to their introduction.

Hearing Officer: Yes. I understand that. So once again, we have gone into this off the record, but I think it should now be placed on the record.

Will you, Mr. Braid, state your reasons for offering these documents.

Mr. Braid: My reason for offering the documents is simply that Mr. Rigby is an individual, and there are facts that surround his case.

Hearing Officer: We have certain facts stipulated to now.

Mr. Braid: That's correct.

Hearing Officer: Which I think are the relevant facts as respects his denial of membership.

Mr. Braid: Okay. I feel that it is important to make it clear that Mr. Rigby meets every membership eligibility requirement set forth in the Communications Workers' constitution in Article five, which provisions are incorporated by reference in Article five of the by-laws of Local 1104.

In fact, the constitution makes it very clear that (30) even if someone were to be fined, expelled or suspended from the Communications Workers of America for dual unionism activities they could nonetheless become a member of the union again.

Although our position in this case, and we are not changing the theory of the case, is that under no circumstances can a union under an agency shop provision deny membership to an individual, and then insist that he pay dues on pain of discharge.

Conceivably the union's position could prevail. If that were to happen there might be circumstances where an exception to that might be made and perhaps one of those exceptions would be in an instance where an individual, having the only documents that were available to him that set forth with any particularity and clarity what he can and cannot do as an individual in a bargaining unit, and relying upon those documents and guiding his actions by those documents, is then denied membership for some other reason.

Under those circumstances, while it might be found on the general abstract principle that there may be some situations where a union can lawfully deny membership to an individual under an agency shop provision, and then insist that that individual pay dues, it might be unconscionable to extend that to a situation before a layman, (31) having only, the only documents that he can rely upon guides his actions by those documents and then finds himself out of a job.

Especially where, in the case of Mr. Rigby, he has been working for the Telephone Company for about 25 years. That's a serious hardship.

And he has guided his actions by the only documents available to him from the union and has been denied membership on some other ground.

That's why we feel those documents are relevant. We are not arguing a different theory. We just want the facts to be—

Hearing Officer: I understand.

The respondent has objected to the introduction of these documents or receipt in evidence of these documents on the ground of relevancy.

And I will indicate now as I did off the record that I will sustain that objection.

I think in so far as what you have had to say as regards Mr. Rigby's case, Mr. Braid, in essence, relates to the reason for the denial of his membership.

Now, the parties have already stipulated to that. In ruling that the documents are not relevant, I do so because the union respondent has not raised any contention that Mr. Rigby did not in any other respects, in so far as either (32) the constitution or by-laws are concerned, not meet any of the requirements in those provisions.

The respondent hasn't raised—the respondent's defense to his—to its actions in this case is a very narrow one.

It doesn't relate to the constitution and by-laws and that's the reason that I have ruled that they are irrelevant.

However, as I indicated off the record, if you wish, you may have them marked as charging party exhibits 1 and 2, respectively, and I will have them placed in the rejected exhibits file.

Mr. Braid: I would like to have these exhibits so marked.

I offer the Communications Workers International Con-

stitution and Permanent Rules Governing Conduct of the C.W.A. Conventions as amended March and June, 1971, as the Charging Party's Exhibit 1 for identification, and as Charging Party's Exhibit 2, for identification, I offer the by-laws of Local Number 1104, Communications Workers of America, revised and complete edition, December 1969, which I believe is the latest copy.

Mr. Ostrin: I take it these are being placed in the rejected exhibit file?

Hearing Officer: Yes.

(33) (Above-referred to documents marked Charging Party's Exs. 1 and 2 for identification.)

(Documents previously marked Charging Party's Exs. 1 and 2 were rejected.)

Hearing Officer: Off the record.

(Discussion off the record.)

Hearing Officer: On the record.

Mr. Braid: Already in the record is a copy of the General Counsel's decision on Mr. Rigby's initial appeal, which resulted in the issuance of a complaint in this action.

Originally that appeal was taken on two grounds, one of which was denied, and which is not being contested in this proceeding.

That ground was that Rigby was unlawfully denied membership. The General Counsel found that he was lawfully denied membership.

But there is some language in his decision which seems to indicate that Mr. Rigby was engaged in dual unionism, which might seem to imply that he had been engaged in those activities while a member of the Communication Workers.

And the subsequent charge filed by Mr. Rigby more fully setting forth the facts as they relate to Mr. Rigby, another decision was issued by this region upholding the (34) denial of membership to Mr. Rigby for his organizational activities on behalf of another labor organization.

For the purpose of making the record complete, I think that we can stipulate as a joint exhibit or the charging party can introduce this as an additional exhibit.

Hearing Officer: We will put it in as Charging Party Number 3, if you wish.

Mr. Ostrin: That's Regional Director's letter of what?

Mr. Braid: September tenth.

Hearing Officer: Frankly, I think all this is irrelevant but since there's no objection to it, it will be received as Charging Party Exhibit 3.

(Above-referred to letter marked Charging Party's Ex. 3, for identification.)

(Letter previously marked Charging Party's Ex. 3 received in evidence.)

Hearing Officer: Off the record.

(Discussion off the record.)

Hearing Officer: On the record.

Mr. Ostrin: Respondent, in view of General Counsel's amendment to paragraph four of the complaint, respondent would now seek to amend its answer by admitting paragraph four of the complaint.

Hearing Officer: Very well. Your motion is granted.

Mr. Ostrin: And with respect to General Counsel's (35) amendment to paragraph five of the complaint, I might merely state for the record that the amendment now conforms to our answer to paragraph five.

Hearing Officer: Very well.

Now, is there anything further to cover before we adjourn today?

Mr. Friedman: Nothing, Your Honor.

Hearing Officer: Did you have a statement you wish to make?

Mr. Braid: Well—

Hearing Officer: I understand that you are aware of the stipulations that will be made tomorrow, but that you do not intend to be present?

Mr. Braid: That's correct.

The reason I will not be present tomorow is that nothing additional will be raised concerning Mr. Rigby's case.

I am told the only thing that will happen with respect to Mr. Rigby's case is that a motion to intervene will be made by the Telephone Company, to which I will not object.

Hearing Officer: Very well. With that we will adjourn until ten a.m. tomorrow.

(Whereupon, at 1:12 o'clock p.m., the hearing was adjourned.)

Transcript of Testimony

(36) BEFORE THE NATIONAL LABOR RELATIONS BOARD
TWENTY-NINTH REGION

Case Nos. 29-CB-1347-3, 29-CB-1426

In the Matter of:

LOCAL 1104, COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO (New York Telephone Company)

—and—

WELLINGTON G. RIGBY, An Individual

LOCAL 1101, COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO

—and—

NEW YORK TELEPHONE COMPANY

16 Court Street
Brooklyn, New York
October 25, 1973

Pursuant to notice, the above-entitled matter came on for hearing at 10:30 o'clock a.m.

Before:

JOHN P. VON ROHR, *Administrative Law Judge.*

Appearances:

JOEL FRIEDMAN, ESQ., Counsel for the General Counsel.
(37) ROBERT W. PARTNOY, ESQ., Of Counsel
Cohn, Glickstein, Lurie, Ostrin & Lubell, Esqs.,
1370 Avenue of the Americas
New York, New York
Appearing on behalf of the Communications Workers of America.

Transcript of Testimony

BERNARD YAKER, ESQ.,
140 West Street
New York, New York
Appearing on behalf of New York Telephone Company.

CONTENTS

No witnesses were examined

Exhibits:
None

---

(39) PROCEEDINGS

Hearing Officer: We will be on the record.

Mr. Yaker is with us this morning, and will you put in your appearance then, please?

Mr. Yaker: My name is Bernard Yaker, Y-ak-e-r, 140 West Street, zip code 10007.

I am attorney for the New York Telephone Company, which is the employer in the Rigby case, or referred to as case number—

Hearing Officer: We know the case.

Mr. Yaker: CB-1347-3, and as the charging party in case number 29-CB-1426. At this time I request permission to intervene in the Rigby case, the New York Telephone Company being the employer, having an interest in the outcome of that case.

Hearing Officer: Well, in so far as I am concerned, since you have now put in an appearance, that entitles you to participate fully in all aspects of the entire proceeding which is before me, including both cases.

Mr. Yaker: Thank you.

Hearing Officer: In effect, you have--you are an intervenor. You are a party to this entire proceeding.

Mr. Friedman: Your Honor—

Mr. Yaker: I would like the record to reflect that,

which I am sure it already does, that the New York (40) Telephone Company did not participate in the proceedings that took place October 24th in the Rigby case.

I would like to make one statement, if Your Honor pleases, with regard to what I understand has taken place in that case.

With regard to the issue of the rejected exhibits, exhibits of the Charging Parties numbers 1 and 2, marked for identification.

Hearing Officer: I think the General Counsel has fully apprised you with respect to everything that has occurred yesterday. Is that not true?

Mr. Friedman: Yes, Your Honor.

Hearing Officer: I don't see any necessity for reporting in on the record.

Hearing Officer: My intention was solely to state the position of the intervenor in that case with regard to those exhibits, and not to have everything else repeated, in view of the fact that I did not have an opportunity to state my position yesterday.

So, if Your Honor pleases, it is a very short statement.

The intervenor's position with regard to the rejected exhibits is that they are certainly relevant and material to the charge filed by Mr. Rigby.

However, I believe that implicit in the admission (41) by the respondent in that case, that the sole reason for Mr. Rigby's rejection from membership was for his activities on behalf of another union prior to his application, is the fact that Mr. Rigby was otherwise completely qualified for membership under the C.W.A. constitution and by-laws, and under the local's constitution and by-laws.

Hearing Officer: I may state that I am inclined to agree that you are correct in that respect. That is the basis for my rejecting the constitution and by-laws.

It is my view that they are immaterial. There is only one reason given for denying Mr. Rigby membership, and

I would assume that he was otherwise qualified for membership.

Mr. Yaker: That is all.

Thank you.

Mr. Friedman: Your Honor, I understand that the parties have a stipulation now with regard to the 1426 case.

First, I understand that we are stipulating that the strike referred to in paragraphs nine and ten of the amended complaint in case 29-CB-1426, is the same strike the legality of which is currently before the Board in case numbers 2-CB-5272, et al.

Mr. Yaker: That is so.

Mr. Partnoy: So stipulated.

(42) Hearing Officer: You so stipulate?

Mr. Yaker: Yes, I do.

Hearing Officer: So stipulated.

Mr. Friedman: Also, under the parties in this proceeding are now stipulating into evidence, the official transcript and exhibits in case number 29-CB-5172, et al., on the question of the legality of that strike.

Mr. Yaker: I would like to amend that, if I may, by merely including the official transcript, exhibits and stipulations, though I imagine that the language proposed would probably include stipulations, I would like to make it explicit that we are stipulating into this record the transcript, the exhibits, as well as all stipulations entered into at that time.

Hearing Officer: Of course.

Mr. Friedman: Yes, Your Honor, the entire record of that case.

Mr. Partnoy: So stipulated.

Mr. Yaker: Are we including the word stipulation?

Mr. Friedman: Yes.

Hearing Officer: Very well. So stipulated.

Mr. Partnoy: By way of clarification, those stipulations are not binding on this case?

Hearing Officer: Let me put it this way. The stipulations that are contained in the transcript are part (43) of the stipulation in this case.

In other words, if those stipulations are relevant, then they would apply to this case.

Mr. Partnoy: As they go to the question of the legality of the strike?

Mr. Yaker: That is correct.

Mr. Partnoy: Solely for that purpose?

Mr. Friedman: I don't know if there is anything in there on any other questions.

Hearing Officer: Does that conclude the stipulations then?

Mr. Friedman: It does.

Mr. Yaker: That doesn't conclude the stipulations? We haven't—

Hearing Officer: Off the record.

(Discussion off the record.)

Hearing Officer: On the record.

Mr. Yaker: Will you state what the stipulation is with regard to the authorization cards?

Mr. Friedman: Yesterday when we put into evidence General Counsel's Exhibit 3, we stipulated that the writing on that card, such as name and clock number, was not in effect being included in the exhibit as it stood in evidence, but we did stipulate that Mr. Rigby and the other persons involved in this case, did check off the first (44) box, as it appears on General Counsel's Exhibit 3.

Hearing Officer: All right.

Now, I understand that you wish to let the record show that you will agree to that stipulation; is that correct?

Mr. Yacker: That is correct, Your Honor.

New York Telephone Company accedes to that stipulation.

Hearing Officer: Very well.

Then is there anything further? Now, I indicated to the parties before we went on the record this morning, that particularly since I am unfamiliar with the evidence in the transcript and exhibits in the prior proceeding, and also because I understand there are noval issues of law involved in this case, that I would like to be fully briefed both as to fact and law in this entire proceeding.

I had also indicated that I hoped the parties could file briefs within two or three weeks, because my work load is such that I could turn to this case very shortly.

However, counsel have all indicated that because of prior commitments they wish to have the maximum amount of time within which to file briefs.

So, I will give you that, and I will fix the time for filing of briefs to be November 26, 1973, and briefs (45) be due in Washington on that date. Now, I do urge the parties to make every effort to have briefs filed on that date, and not to request any further extension of time, if at all possible. Is there anything further?

Mr. Yaker: I—

Mr. Friedman: Just on that one point, I just wanted the record to reflect that General Counsel was, would have been willing to be ready on the 19th with the brief, the original date.

Hearing Officer: Thank you.

Mr. Yaker: I guess the record should reflect then that the charging party as well as the respondent both requested the maximum time.

Hearing Officer: That is correct.

Mr. Yaker: May we go off the record.

(Discussion off the record.)

Hearing Officer: On the record.

In view of the fact that the transcript and exhibits in the prior case are now before the Board, and therefore will not be available to me, the General Counsel has agreed to provide a duplicate copy of the transcript, and duplicate exhibits in those proceedings, to the court reporter, and he will submit them to me in Washington?

Mr. Friedman: Yes, Your Honor. In effect, Your Honor, I guess that becomes a joint exhibit, since we (46) stipulated it in.

Hearing Officer: I will consider them to be joint exhibits, yes. Very well.

There being nothing further, the hearing is now closed.

(Whereupon, at 10:45 o'clock a.m., the hearing was closed.)

Rigby's Request for Payroll Deduction
(General Counsel's Exhibit 3)

(Mounted Opposite)

RIGBYS REQUEST
FOR
PAYROLL DEDUCTION
(GENERAL COUNCEL'S EXHIBIT 3

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO
Request for Payroll Deduction

3-6731 RIGBY WELLINGTON G 119-14-5929

PLANT FREEPORT 1104

To NEW YORK TELEPHONE COMPANY

I authorize the Company, effective as soon as practicable, to deduct from my wages or sickness benefits [illegible] either:

✓ My membership dues in such amount and in such installments as may be certified by CWA [illegible] fee of $ [illegible] approved by [illegible] CWA, shall be deducted from my pay [illegible] with the [illegible] authorization.

I hereby designate CWA as my [illegible] representative and agree to [illegible] Constitution and Local By Laws.

An amount equal to the regular [illegible] paid by members [illegible] CWA.

If, for any reason other than [illegible] there are insufficient [illegible] week for which [illegible] deduction is authorized, I authorize the Company to [illegible] it being understood that if there are such [illegible] five or more [illegible] consecutive deduction weeks, there will be no make up of the missed deductions for [illegible]

(over)

ONLY COPY

FRONT

Wellington B Rigby

30 N MacPage DR Bethpage N.Y

11714

BACK

Decision and Proposed Order of Administrative Law Judge

JD-788-73
New York, N.Y.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
WASHINGTON, D.C.

LOCAL 1104, COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO
(NEW YORK TELEPHONE COMPANY)

and

WELLINGTON G. RIGBY, An Individual

Case No. 29-CB-1347-3

LOCAL 1101, COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO

and

NEW YORK TELEPHONE COMPANY

Case No. 29-CB-1426

JOEL FRIEDMAN, ESQ., for the General Counsel.

H. HOWARD OSTRIN, ESQ., for the Respondent.

FREDERICK D. BRAID, ESQ., appearing on behalf of Charging Party Rigby.

HOWARD YAKER, ESQ., appearing on behalf of Charging Party New York Telephone Company.

Decision and Proposed Order of Administrative Law Judge

STATEMENT OF THE CASE

JOHN P. VON ROHR, Administrative Law Judge: Upon charges, duly filed, the General Counsel of the National Labor Relations Board, by the Regional Director for the Twenty-Ninth Region (Brooklyn, New York) issued complaints, consolidated in this proceeding, against Local 1101 and Local 1104, Communications Workers of America, AFL-CIO, herein called the Respondents or the Unions, alleging that they had engaged in certain unfair labor practices in violation of Sections 8(b)(1)(A) and (2) of the Act.[1] Respondents filed an answer denying the allegations of unlawful conduct alleged in the complaint. Pursuant to notice, a hearing was held before Administrative Law Judge John P. von Rohr in Brooklyn, New York, on October 24 and 25, 1973. Briefs were received from the General Counsel, the Respondents and the Charging Parties on December 3, 1973 and they have been carefully considered. Upon the entire record in this case, and from my observation of the witnesses, I hereby make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

New York Telephone Company, also referred to in the complaint as Telco, is a New York corporation maintaining its office and principal places of business in the City and State of New York where it is engaged in providing telephone communication and related services. During the year preceding the issuance of the complaint, Telco derived gross revenues from its operations in excess of $500,000. During the same period it purchased goods and material

1. The complaint in Case No. 29-CB-1347-3 issued on January 31, 1973, and was based on a charge filed on October 17, 1972. A complaint and an amended complaint in Case No. 29-CB-1426, issued on March 27, 1973, and October 12, 1973, respectively. The charge in this case was filed on February 2, 1973.

valued in excess of $50,000 from points and places located outside the State of New York. The parties concede, and I find, that New York Telephone Company is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. The Labor Organization Involved

Locals 1101 and 1104, Communications Workers of America, AFL-CIO, are labor organizations within the meaning of Section 2(5) of the Act.

III. The Unfair Labor Practices

A. *Background*

The facts in this case are essentially undisputed.[2] The Communications Workers of America, AFL-CIO, is the collective-bargaining representative for employees in a number of separate bargaining units in the Bell system, including the New York Telephone Company. The Respondent locals are constiuent locals of their CWA parent, Local 1101 having jurisdiction over Suffolk County, New York and Local 1104 over Nassau County, New York. These are located in the New York City Metropolitan area and thus

2. The facts pertinent to the background of this case, as well as other facts relative to the issues herein, are principally set forth in *Local 1101 and Local 1104, Communications Workers of America, AFL-CIO*, Case No. 2-CB-5172, *et al.*, the transcript and exhibits of which the parties have agreed to stipulate as part of the record in the instant proceeding. Judge Benjamin K. Blackburn has issued his decision in this proceeding on September 4, 1973 (JD-537-73). In setting forth the background and other factual matters herein, I have borrowed freely from the facts, which are uncontested, as set forth in Judge Blackburn's Decision as well as from those set forth in the brief submitted by Charging Party New York Telephone Company. Respondent's brief does not include any detailed statement of facts, presumably because they are not in material dispute.

are "downstate," as distinguished from various "upstate" locals.

In 1971, as in the past, CWA and the Bell System bargained nationally on a pattern basis, the Western Electric Company and the Chesapeake and Potamac Telephone Company having been selected as the pattern makers. Negotiations with these parties began in the spring of 1971 and were expected to set the pattern for settlements with the other Bell System Companies. These negotiations resulted in a nationwide telephone strike which began on July 14, 1971, and ended on July 21, 1971.

CWA's contract with New York Telephone Company having an expiration date of July 28, 1971, the parties to this agreement began negotiations for a new contract on July 6, 1971. The Union bargaining committee consisted of two representatives of Local 1101, the President of Local 1106, and representatives of Locals 1107, 1122 and 1126, and was chaired by Don Sanchez, CWA's are director and chairman of its bargaining committee. Following meetings on July 7 and 9, Sanchez cancelled a meeting scheduled for July 13 so that the bargaining committee members could return to their home locals in New York State to carry out their duties in connection with the nationwide strike scheruled to begin the next day. Negotiations resumed on July 14 and continued to July 18. On July 14, 2000 employees of the approximately 39,000 unit employees of New York Telephone reported to work.

The national negotiations resulted in an agreement on July 18, 1971, subject to ratification by employees on a unit basis. The CWA National Executive Board thereupon terminated the strike and directed all members to return

to work on July 21 pending results of the ratification vote. The New York locals, however, including the Respondent Locals in this proceeding, opposed the settlement agreement and remained on strike.[3]

On August 19, 1971, the New York Telephone Company resumed negotiations with the CWA. On August 26, CWA formally authorized the strike of the New York locals which then was continuing in effect. A new contract between CWA and the New York Telephone Company was finally ratified on February 16, 1972, and the New York strike was terminated on February 18, 1972.

During the course of the strike, employees of New York Telephone Company, in varying numbers and at various times, including those hereinafter named, reported for work and crossed picket lines. Some employees resigned from the Union before returning to work while others were never members of the Union.

Prior to the latest (1972) contract, the collective bargaining agreements between CWA and Telco contained only a maintenance of dues provision. However, the agreement of February 1972 for the first time contained a so-called "agency shop" provision. The language of this clause provides as follows:

> 33.01 Each regular employee shall, as a condition of employment, pay or tender to the Union amounts equal to the periodic dues applicable to members for the period beginning 30 days after hire or 30 days after February 17, 1972, whichever occurs later, until the termination of this collective bargaining

3. Three upstate CWA locals returned to work in compliance with the CWA National Board directive.

agreement, except that an employee may terminate this condition of employment by giving a written individual notice to the Company and the Union of such termination by certified or registered mail, return receipt requested, and postmarked between July 8, 1974 and July 17, 1974 both dates inclusive.

B. *The Allegation that Respondent Local 1101 Unlawfully Sought the Discharge of Employees For Failure to Pay Dues, While Denying them Union Membership*

The facts concerning the above allegations are brief and not in dispute. Thus, the parties stipulated that during the month of July 1972, the following employees applied for membership in Respondent Local 1101 pursuant to the agency shop clause in the contract:

Mary Semanicki	Tyrone Hecker
Guiseppe Arrigo	Alice Allen
C. Clumysun	Anthony Perillo
Leon Pantin	William Haydak
Onkar Singh	Donald MacMillan
J. R. Swart	Carl Bryan
Clarence Meekins	John Schreiner
Frank Fyall	Nelson Phitts
Joseph Fiumano	John Munday
Wun Yee Poon	John Martinez
Frederick Brown	Lala Jones
Remo Bellioli	Douglas Goodman
Theodore Braithwaite	Mary Myhalko
Eugene Sullivan	W. Jurevyszyn
Gordon St. Louis	

It is further undisputed that each of the above employees signed check-off cards authorizing the Company to

deduct union dues from their pay. However, as Respondent concedes, on or about August 18, 1972, the membership applications of each of the above employees were rejected solely because they refused to participate in the strike and had crossed the picket lines established by Local 1101.[4] Finally, it is undisputed that upon denial of membership, the above employees refused to tender amounts equivalent to union dues to Local 1101, whereupon this Respondent, on or about December 4, 1972, requested the Company that they, and each of them, be discharged under the agency shop provision of the collective-bargaining agreement.

Concerning all the foregoing, the complaint in Case No. 29-CB-1426 substantially alleges that Respondent Local 1101 violated Section 8(b)(1)(A) and 8(b)(2) by demanding that the New York Telephone Company, on or about December 4, 1972, discharge the above-named employees for failure to pay dues, under the Agency Shop provision of the contract, following its rejection of their applications for membership because they crossed Respondent's picket line during the strike against the Company from July 1971 to February 1972.

As a starting point in deciding the issue presented above, I think it well to first cite the applicable provision of the Act. Thus, Section 8(b)(2) makes it an unfair labor practice for a labor organization:

> "to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some

4. Respondent's answer admits the allegation in the complaint that the denial of membership occurred on or about August 18, 1973.

> ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership"

Section 8(a)(3) of the Act, which set forth the requirements of lawful union-security agreements, in relevant counterpart makes it an unfair labor practice for an employer by discrimination in regard to the hire or tenure or condition of employment to encourage or discourage membership in any labor organization:

> (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of requiring or retaining membership.

Recognizing the obvious difference between a union security agreement, and an agency shop agreement both the General Counsel and the Respondents cite the case of *National Labor Relations Board* v. *General Motors Corporation*, 373 U.S. 734 (1963) in support of their respective positions concerning the alleged violations herein. However, the Supreme Court's decision in that case, as I read it, in essence goes no further than to hold that an agency shop is a *permissable* form of union security under the Act. Other than that, and apart from any far reaching arguments which can be made only by citing certain dicta taken out of context from the whole, I fail to see where the *General Motors* decision, *supra*, has any material bearing upon the issue presented in the present case.

More to the point, the General Counsel urges that the instant proceeding is analagous to issues presented and decided in *Local 4186, United Steelworkers of America, AFL-CIO (McGraw Edison Company)*, 181 NLRB 992 and

Communications Workers of America, Local 9505 (The Pacific Telephone and-Telegraph Company), 193 NLRB 83. In the *McGraw Edison* case the union denied an employee the right to attend union meetings and to hold office for a period of 1 year for the reason that he previously had filed a decertification petition with the Board. When the employee thereupon refused to pay dues, the Union, under a valid union-security clause in the collective-bargaining agreement, threatened to seek his discharge. Under these facts the Board held that "a labor organization violated Section 8(b)(1)(A) by invoking, or threatening to invoke a lawful union-security clause to enforce payment of dues by a member whose membership has been significantly impaired because he filed a decertification petition." In so finding, the Board first made it clear that it was not dealing with the Union's internal right to discipline a member because he filed a decertification petition, but rather that it was the insistance of payment of dues upon penalty of discharge while membership was impaired that constituted the unlawful conduct. The Board further stated:

> However, Respondent's insistence upon Blaine's continued payment of dues during periods when his rights as a member were significantly reduced constituted a continuing form of corecion tending to operate as a serious restraint upon access to Board processes. The Union's insistence upon Blaine's payment of dues, on pain of discharge, cannot be considered as disassociated from the suspension of membership rights resulting from his decertification activity. We see no justification, either in the proviso to Section 8(b)(1)(A) or in considerations of a labor organization's need for self-preservation, for the steps taken against Blaine. The threat to en-

> force the union-security clause while continuing the sanctions against Blaine was hardly necessary to preserve the Union's existence as an institution, nor could it be viewed as a noncoercive form of internal discipline which would have no discouraging effect upon a member's decision to invoke the Board's representation procedures.

The *Pacific Telephone* case, *supra*, involved substantially the same factual situation as *McGraw Edison*, except that the employees there involved had been disciplined by expulsion from the Union, rather than by impairment of membership privileges, for having filed a decertification petition. In addition to find a Section 8(b)(1)(A) violation, the Board in *Pacific Telephone* found that the Union violated Section 8(b)(2) of the Act for in fact having demanded the employer to discharge the employees under the Union shop provision of the contract.

Returning to *McGraw Edison*, the Board found it unnecessary to pass upon the essentially related question presented in the instant case and specifically noted as follows:

> As our decision in this case is based on the coercive steps taken as a result of filing a decertification petition, we need not pass on whether a labor organization violated 8(b)(1)(A) through enforcement of a union security clause against a member whose membership was impaired for reasons unrelated to seeking access to board decertification processes.

Passing upon this point, as I now must, and for the moment restricting this view to a union-security situation, I find there are compelling reasons for extending the Board's holding in *McGraw Edison* and *Pacific Telephone* to apply to situations where membership is denied or im-

paired because of employees' exercise of rights guaranteed them under Section 7 of the Act. Thus, it is hardly necessary to cite authority for the proposition that a primary function of the Board has been to protect Section 7 rights. It is equally clear that the refusal of employees to cross a picket line during a strike is one of the rights guaranteed by Section 7. Accordingly, if the Board deems it necessary to protect the right of "providing unimpeded access to its procedures and remedies," as it stated in *McGraw Edison*, I would find that, in effectuating the policies of the Act, the Board is equally obligated to protect the rights of employees arising under Section 7 of the Act. It follows, therefore, and I would hold, that a labor organization violates Section 8(b)(1)(A) and 8(b)(2) of the Act by invoking a lawful union-security clause to enforce payment of dues where employees have been denied union membership for exercising a right (crossing a picket line during a strike) guaranteed by Section 7 of the Act.

Assuming the validity of the premise as aforesaid, the issue further presented is whether this principle should be extended to an analagous situation, but involving the enforemenct of an ageny shop rather than union shop provision. For the reasons stated below, I am persuaded that this question should be answered in the affirmative.

To begin with, it is hardly open to question that an agency shop arrangement provides a labor organization with a lesser form of union security than does a lawful union shop arrangement. In fact, and as is apparent from the facts in the *General Motors* case, *supra*, the very concept of an agency shop arrangement originated with a labor organization and was intended to be utilized as a device to protect labor organizations against "free rides"

in states where otherwise lawful union security arrangements are prohibited by right-to-work laws. Accepting, then, the undeniable fact of the agency shop being a "less severe form of union security arrangement"[5] than the union shop, it surely would be anomalous to hold that, under equivalent circumstances, a labor organization should be invested with greater rights to enforce the collection of dues as a condition of employment under an agency shop agreement. Further, since it is well settled that under a union shop an employee has the option to refrain from becoming a union member, as long as he tenders his dues,[6] a similarly anomalous result would be reached if this option no longer would be available to an employee under an agency shop situation.

In short, I think it contrary to all common sense and the mandate of the Act to allow the Union here to selectively choose its membership while at the same time retaining the right to insist upon payment of dues as a condition of employment. This, as has been discussed above, it could not do under the more stringent form of a union shop arrangement.

---

5. *General Motors, supra.*

6. Thus, in *Union Starch & Refining Co.*, 87 NLRB 779, enfd. 186 F. 2d 1008, cert denied, 342 U.S. 815, the Board stated:

> If the union imposes any qualifications and conditions for membership with which he is unwilling to comply, such an employee may not be entitled to membership, but he is entitled to keep his job. Throughout the amendment to the Act, Congress evinced a strong concern for protecting the individual employee in a right to refrain from union activity and to keep his job even in a union shop. Congress carefully limited the sphere of permissible union security and even in that limited sphere accorded the union no power to affect the discharge of nonmembers except to protect itself against "free rides."

Accordingly, and in view of all the foregoing, I find that by demanding the discharge of the above-named employees for failure to pay sums equivalent to union dues, after having denied them union membership because they crossed the picket line, Respondent Local 1101 violated Section 8(b)(1)(A) and (2) of the Act.

C. *The Case of Wellington G. Rigby (Local 1104)*

Except for the factual differences discussed below, Rigby's case is not unlike the cases of the employees discussed above.

Rigby has been in continuous employ of New York Telephone Company since July 6, 1968. He became a member of Respondent Local 1104 in May 1969 and remained a member until July 7, 1971, at which time he resigned his union membership in accordance with the collective-bargaining agreement then in effect. Rigby did not work during the strike referred to in the preceding section herein, but returned to work after the strike had been settled. Thereafter, in the spring of 1972, Rigby engaged in organizing activities upon behalf of the Teamsters Union. On or about July 20, 1972, at which time he had ceased his activities upon behalf of the Teamsters, Rigby applied for membership in Respondent Local 1104. At the same time he executed a dues checkoff card, authorizing the Company to deduct membership dues from his wages. It is undisputed that on September 5, 1972, Respondent Local 1104 rejected Rigby's application for membership solely on the ground that he had engaged in organizational activities on behalf of a rival union, i.e., a Teamster local.[7] Thereafter,

7. Respondent's answer states that on September 2, 1972, Rigby "reiterated his earlier request for admission to union membership."

upon Rigby's refusal to tender amounts of money equivalent to union dues under the agency shop provision of the contract, Respondent Local 1104 requested the New York Telephone Company to terminate his employment for failure to pay the agency shop fee.

Just as the employees who crossed the picket line were engaged in the exercise of a Section 7 right, Rigby's participation in organizational activities on behalf of the Teamsters Union was a right also protected by Section 7 of the Act. Accordingly, and for all the reasons set forth in the preceding Section, I find that Respondent Local 1104, by seeking the discharge of Rigby for failure to pay the agency shop fees, after having denied his membership for engaging in organizing activities on behalf of a rival union, violated Section 8(b)(1)(A) and (2) of the Act.

E. *The Allegation that Respondent Local 1101 Violated Section 8(b)(1)(A) By Denying Membership to Employees who Crossed Its Picket Line*

Apart from the allegations pertaining to Respondent's request that employees be terminated for failure to pay the equivalent of union dues, the General Counsel further contends that the denial of membership to the employees previously named herein (exclusive of Rigby) was *itself* unlawful because the basis for such denial was their crossing of Respondent's picket line during the strike.[8] Conceding

8. I find no merit to Respondent's contention that the allegation here at issue is barred by Section 10(b) of the Act. The alleged violation here was Respondent's denial of membership to the employees, which occurred on or about August 18, 1972. This was well within the period covered by the charge herein, which was filed on February 2, 1973.

that Respondent's denial of membership to these employees would not violate the Act if the strike was lawfully called, the particular basis for this contention is premised on the further allegation that CWA and Local 1101 engaged in the strike without meeting the notice requirements of Section 8(d) of the Act. Insofar as the latter allegations are concerned, this issue has been raised and litigated in *Local 1101 and Local 1104, Communications Workers of America, AFL-CIO (New York Telephone Company, et al)* Case Nos. 2-CB-5172, 2-CB-5141, et al, in which Administrative Law Judge Benjamin K. Blackburn issued his decision on September 4, 1973 (JD-537-73). For the reasons stated therein, I agree with and adopt the findings, and accordingly herein find, that Respondent Local 1101 engaged in the strike (which commenced on July 14, 1971 and continued to on or about February 17, 1972) without meeting the requirements of Section 8(d) of the Act.[9]

It is now well established that, notwithstanding the proviso to Section 8(b)(1)(A) of the Act which confers upon labor organizations the right to prescribe their own rules with respect to the acquisition or retention of membership, a union may nonetheless commit an unfair labor practice if it takes certain disciplinary action against members for the purpose of enforcing union rules which are violative of the Act or of public policy. Thus, in upholding the Board's finding that expulsion from the Union for filing charges with the Board violated Section 8(b)(1)(A) the Supreme Court, in *N.L.R.B.* v. *Industrial Union of Ma-*

[9] The parties involved having been previously served Administrative Law Judge Blackburn's decision, I see no need to further burden Board costs and duplication processes by hereto attaching a copy of that decision.

rine & Shipbuilding Workers of America, AFL-CIO, 391 U.S. 418, stated "Section 8(b)(1)(A) assures a union freedom of self-regulation where its internal affairs are concerned. But where a union rule penalizes a member for filing an unfair labor practice charge with the Board, other considerations of public policy came into play."

In a later case, *Scofield* v. *N.L.R.B.*, 394 U.S. 423; the Supreme Court elaborated further with the following:

> Under this dual approach, Section 8(b)(1) leaves a union free to enforce a properly adopted rule which reflects a legitimate union interest, *impairs no policy Congress has embedded in the labor laws*, and is reasonably enforced against union members who are free to leave the union and escape the rule.
>
> (Emphasis supplied)

Since the Respondent here engaged in a strike without complying with the provisions of Section 8(d) of the Act, thus clearly impairing a policy which Congress has embedded in the labor laws, I find that Respondent's action in denying membership to employees who refused to cross the picket line during the strike in question constituted restraint and coercion within the meaning of Section 8(b)(1)(A) of the Act.[10]

---

10. *Communication Workers of America, AFL-CIO, Local 1170 (Rochester Telephone)* 194 NLRB 872. For related cases see also *Local 12419, District 50, United Mine Workers of America (National Grinding Wheel Company)* 176 NLRB 628; *Glaziers Local No. 1162 (Tusco Glass, Inc.)* 177 NLRB 393; *International Molders and Allied Workers Union, Local 125 (Blackhawk Tanning Co.)* 178 NLRB 208.

IV. The Effect of the Unfair Labor Practice Upon Commerce

The activities of the Respondents set forth in section III, above, occurring in connection with the operations of the employer described in section I, above, have a close, intimate and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Having found that Respondents have engaged in unfair labor practices violative of Section 8(b)(1)(A) and 8(b)(2) of the Act, I shall recommend that they cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

CONCLUSIONS OF LAW

1. New York Telephone Company is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

2. Respondents Local 1101 and 1104, Communication Workers of America, AFL-CIO, are labor organizations within the meaning of Section 2(5) of the Act.

3. By requesting the discharges of the employees heretofore named in this Decision unless they paid amounts equal to periodic dues, while simultaneously denying them union membership because they crossed Respondents' picket line, Respondent Local 1101 restrained and coerced these employees in the exercise of rights guaranteed them in Section 7 of the Act and by attempting to cause New York Telephone Company to discriminate against these em-

ployees in violation of Section 8(a)(3) of the Act, is thereby engaging in unfair labor practices within the meaning of Section 8(b)(1)(A) and (2) of the Act.

4. By requesting the discharge of Wellington G. Rigby unless he paid amounts equal to the periodic dues, while simultaneously denying him union membership because he engaged in organizational activities on behalf of another labor organization, Respondent Local 1104 restrained and coerced Rigby in the exercise of rights guaranteed in Section 7 of the Act and by attempting to cause New York Telephone Company to discriminate against him in violation of Section 8(a)(3) of the Act, is thereby engaging in unfair labor practices within the meaning of Section 8(b)(1)(A) and (2) of the Act.

5. By denying union membership to employees for crossing a picket line established by Respondent, Respondent Local 1101 restrained and coerced employees in the exercise of rights guaranteed in Section 7 of the Act, thereby engaging in unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act.

6. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

On the basis of the above findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I issue the following:[11]

11. In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Section 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

ORDER

Local 1101, Communication Workers of America, AFL-CIO, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Requesting the discharge of employees pursuant to an agency shop contract unless they pay amounts equivalent to periodic dues while simultaneously denying them union membership for crossing a picket line established by Respondent.

(b) Denying membership to employees for crossing a picket line during a strike called by the Respondent without first complying with the provisions of Section 8(d) of the Act.

(c) In any like or related manner restraining or coercing employees in the exercise of their rights guaranteed under Section 7 of the Act.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Upon tender of periodic dues and initiation fees, offer union membership to the following employees whom Respondent previously denied membership because they crossed the picket line during the strike beginning on July 14, 1972 and ending on February 18, 1972:

Mary Semanicki	Tyrone Hecker
Guiseppe Arrigo	Alice Allen
C. Clumysun	Anthony Perillo
Leon Pantin	William Haydak
Onkar Singh	Donald MacMillan
J. R. Swart	Carl Bryan

Clarence Meekins	John Schreiner
Frank Fyall	Nelson Phitts
Joseph Fiumano	John Munday
Wun Yee Poon	John Martinez
Frederick Brown	Lala Jones
Remo Bellioli	Douglas Goodman
Theodore Braithwaite	Mary Myhalko
Eugene Sullivan	W. Jurevyszyn
Gordon St. Louis	

(b) Post at its offices, and meeting halls copies of the attached notice marked "Appendix A."[12] Copies of said notices on forms provided by the Regional Director for Region 29, after being duly signed by Respondent's representative shall be posted immediately upon receipt thereof, and be maintained by it for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced or covered by any other material.

(c) Additional copies of the Appendix A shall be signed by the representative of the Respondent union and forthwith returned to the Regional Director for Region 29. These notices shall be posted, the New York Telephone Company willing, in all places where notices to its employees are customarily posted.

(d) Notify the Regional Director for Region 29, in writing, within 20 days from the date of this Order what steps the Respondent has taken to comply herewith.

12. In the event the Board's Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall be changed to read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

Decision and Proposed Order of Administrative Law Judge

Respondent Local 1104, Communications Workers of America, AFL-CIO, its officers agents, successors, assigns shall:

1. Cease and desist from:

(a) Requesting the disharge of employees pursuant to an agency shop contract unless they pay amounts equivalent to periodic dues while simultaneously denying them membership beause of their activities in support of another union.

(b) In any like or related manner restraining or corecing employees in the exercise of their rights guaranteed under Section 7 of the Act.

2. Take the following affirmative action which it is found will effectuate the policies of the Act.

(a) Post at its offices and meeting halls copies of the attached notice marked "Appendix B."[13] Copies of said notices on forms provided by the Regional Director for Region 29, after being duly signed by Respondent's representative shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

---

13. In the event that the Board's Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall be changed to read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

(b) Additional copies of Appendix B shall be signed by the representative of the Respondent Union and forthwith returned to the Regional Driector for Region 29. These notices shall be posted, the New York Telephone Company willing, at all places where notices to its employees are customarily posted.

(c) Notify the Regional Director for Region 29, in writing, within 20 days from the date of this Order what steps the Respondent has taken to comply herewith.

Dated at Washington, D.C.

/s/ JOHN P. VON ROHR
Administrative Law Judge

Appendix A

(Mounted Opposite)

FORM NLRB-4726 (4-71)

APPENDIX A

JD-788-73

NOTICE TO MEMBERS

POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD

AN AGENCY OF THE UNITED STATES GOVERNMENT

WE WILL NOT request the discharge of employees purusant to an agency shop contract unless they pay amounts equal to our periodic dues while simultaneously denying them union membership for crossing a picket line during a strike.

WE WILL, upon their tender of union dues and initiation fees, offer membership to the below-named employees whom we have previously denied membership for crossing a picket line during our strike against the New York Telephone Company which ended on February 18, 1972, in which we participated without having first afforded the Company a timely opportunity to bargain within the meaning of Section 8(d) of the Act.

Mary Semanicki
Guiseppe Arrigo
C. Clumyson
Leon Pantin
Onkar Singh
J. R. Swart
Clarence Meekins
Frank Fyall
Joseph Fiumano
Wun Yee Poon
Frederick Brown
Remo Bellioli
Theodore Braithwaite
Eugene Sullivan
Gordon St. Louis
Tyrone Hecker
Alice Allen
Anthony Perillo
William Haydak
Donald MacMillan
Carl Bryan
John Schreiner
Nelson Phitts
John Munday
John Martinez
Lala Jones
Douglas Goodman
Mary Myhalko
W. Jurevyszyn

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of their rights guaranteed by Section 7 of the Act.

LOCAL 1101, COMMUNICATION WORKERS OF AMERICA, AFL-CIO
(Labor Organization)

Dated _____ By _____
(Representative) (Title)

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 16 Court Street - 4th Floor, Brooklyn, New York 11241 (Tel. No. 212-596-3535).

Appendix B

(Mounted Opposite)

FORM NLRB-4726
(4-71)

APPENDIX B

JD-788-73

NOTICE TO MEMBERS

POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD

AN AGENCY OF THE UNITED STATES GOVERNMENT

WE WILL NOT request the discharge of employees unless they pay amounts equal to our periodic dues, while simultaneously refusing them union membership because they have engaged in activities upon behalf of another union.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of their rights guaranteed by Section 7 of the Act.

LOCAL 1104, COMMUNICATION WORKERS OF AMERICA, AFL-CIO
(Labor Organization)

Dated _____ By _____
(Representative) (Title)

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office 16 Court Street - 4th Floor, Brooklyn, New York 11241 (Tel. No. 212-596-3535).

Decision and Order of National Labor Relations Board

FKP

211 NLRB No. 18

D—8766
Brooklyn, N.Y.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Case 29-CB-1347-3

LOCAL 1104, COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO
(NEW YORK TELEPHONE COMPANY)

and

WELLINGTON G. RIGBY, an Individual

Case 29-CB-1426

LOCAL 1101, COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO

and

NEW YORK TELEPHONE COMPANY

On December 28, 1973, Administrative Law Judge John P. von Rohr issued the attached Decision in this proceeding. Thereafter, the General Counsel and the Respondents filed exceptions and supporting briefs and the charging parties filed answering briefs.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has de-

cided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that Respondents Locals 1101 and 1104, Communications Workers of America, AFL-CIO, their officers, agents, and representatives, shall take the action set forth in the said recommended Order.

Dated: Washington, D.C.
June 6, 1974

. . . . . .
John H. Fanning, Member

. . . . . .
Ralph E. Kennedy, Member

. . . . . .
John A. Penello, Member
NATIONAL LABOR RELATIONS BOARD

(SEAL)

1. The Administrative Law Judge inadvertently found that Rigby's employment by the Company began in 1968; the correct date is 1948. Similarly, the Administrative Law Judge inadvertently found that membership had been denied to employees who "refused to cross the picket line," ALJD, last par. of sec. E. He clearly intended to find that membership had been denied to employees who crossed the picket line and his Decision is hereby corrected accordingly. We also note that, although the Administrative Law Judge refers to his observation of the witnesses, there were no witnesses and no issues involving credibility.

Petition for Review

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Index No. 74-2044

LOCAL 1104, COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO and LOCAL 1101, COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO,

Petitioners,

—v.—

NATIONAL LABOR RELATIONS BOARD,

Respondent.

Local 1104, Communications Workers of America, AFL-CIO and Local 1101, Communications Workers of America, AFL-CIO hereby petition the Court for review of the Decision and Order of the National Labor Relations Board dated June 6, 1974 in case numbers 29-CB-1347-3 and 29-CB-1426.

COHN, GLICKSTEIN, LURIE, OSTRIN & LUBELL
Attorneys for Petitioners
1370 Avenue of the Americas
New York, New York 10019

(12-68) Budget Bureau No. 64-R003.12

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS

INSTRUCTIONS: File an original and 3 copies of this charge and an additional copy for each organization, each local and each individual named in item 1 with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

Case No. 29-CB-1347-3

Date Filed 10-17-72

1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT

a. Name	b. Union Representative to Contact	c. Phone No.
Local 1104, Communication Workers of America AFL-CIO	James T. O'Conner	516 364-1104

d. Address (Street, city, State and ZIP code)

6901 Jericho Turnpike, Suosset, New York 11791

e. The above-named organization(s) or its agents has (have) engaged in and is (are) engaging in unfair labor practices within the meaning of section 8(b), subsection(s) 1(A) (List Subsections) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

Since on or about July 26, 1972, the above-named labor organization, by its officers, agents and representatives refused to accept tender of dues and membership to Wellington G. Rigby, an installer.

By the above and other acts, the above-named labor organization has restrained and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.

3. Name of Employer
NEW YORK TELEPHONE COMPANY

4. Location of Plant Involved (Street, city, State and ZIP code)
McConnell Ct., Bellmore, New York

5. Type of Establishment (Factory, mine, wholesaler, etc.)	6. Identify Principal Product or Service	7. No. of Workers Employed
-	-	200

8. Full Name of Party Filing Charge
Wellington G. Rigby

9. Address of Party Filing Charge (Street, city, State and ZIP code)	10. Telephone No.
30 North Millpage Dr., Bethpage, New York 11714	516 PE5-4651

11. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By /s/ Wellington G. Rigby (Signature of representative or person making charge) — An individual (Title or office, if any)

Address 30 North Millpage Dr. Bethpage, N.Y. 11714 — 516-PE5-4651 (Telephone number) — 10/17/72 (Date)

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

GPO 865-496

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 74-2044

LOCAL 1104, COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO and LOCAL 1101, COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO,

Petitioners,

against

NATIONAL LABOR RELATIONS BOARD,

Respondent.

On Petition for Review and Cross-Application for Enforcement of an Order of The National Labor Relations Board

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK)
) SS:
COUNTY OF NEW YORK)

Sarita Puebla, being duly sworn, deposes and says: That she is over twenty-one years of age: That on the 23rd day of October 1974 she served three copies of the attached Joint Appendix on Elliot Moore, Esq., Attorney for Respondent, three copies on Frederick D. Braid, Esq., Attorney for Intervenor, Wellington Rigby and three copies on Bernard Yaker, Esq., Attorney for Intervenor, New York Tel. Co., by enclosing said copies in fully post-paid wrappers addressed as follows and depositing same in The United States Post Office maintained at No. 150 Christopher Street, New York City, New York.

Elliot Moore, Esq.
Office of the General Counsel
National Labor Relations Board
Washington, D.C. 20570

Frederick D. Braid, Esq.
210 Old Country Road
Mineola, New York 11501

Bernard Yaker, Esq.
1095 Avenue of the Americas
New York, N.Y. 10036

Sarita Puebla
Sarita Puebla

Sworn to before me this

23rd day of October 1974

Quinton C. VanWynen

QUINTON C. VANWYNEN
Notary Public, State of New York
No. 24-4087455
Qualified in Kings County
Commission Expires March 30, 1975